Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
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	)	

COMMENTS OF THE NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION

NATIONAL TELECOMMUNICATIONS
COOPERATIVE ASSOCIATION

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SUMMARY

NTCA agrees that the time has come to reform the complex web of rules that govern the manner in which carriers compensate or fail to compensate each other for access, termination and transport. The different rates that apply to these various types of traffic now depend on the classification of the carrier, the traffic or the technology. A new approach is needed to prevent arbitrage and simplify the system. No group or class of carriers should be able to avoid the obligation to pay for the use of the network functionalities of any carrier. The existing regime is increasingly detrimental to rural telephone companies that are subject to vague and conflicting interconnection rules that permit interconnecting carriers to avoid the obligation to pay for the use of rural telephone company networks. Clear and consistent rules that define carrier payment obligations will benefit everyone. However, the Commission should not use this proceeding to impose new transport obligations that deny rural telephone companies the ability or the right to receive payment from other carriers that utilize rural telephone company facilities for access, transport or termination services.

New rules should provide that rural telephone companies in particular must be compensated for the use of their networks and compensation must continue to be available from carriers that provide disparate retail services to their own customer base. A shift of revenue requirements attributable to cost caused by other carriers to end users or universal service alone is inconsistent with the Commission's goals. It is necessary for reform measures to take account of the fact that carriers utilizing others' networks are cost causers and that they should provide compensation to these providers of basic

infrastructure. The complete elimination of carrier to carrier compensation mechanisms will diminish and possibly destroy the incentive for rural telephone companies to continue to invest both in broadband and in the basic infrastructure needed to provide the telecommunications and advanced services that rural Americans and ultimately the Nation relies on for commerce, safety and security. Neither increases in end user rates alone nor complete shifts of recovery to a universal service mechanism will ensure maintenance of service and provide incentives for future investment.

Reform is needed but changes must occur in the context of other statutorily mandated policies that cannot be ignored. Foremost among these policies is universal service, a policy that requires the Commission to ensure that consumers in all regions of the Nation, including low income consumers and those in rural, insular, and high cost areas continue to have access to telecommunications and advanced telecommunications and information services. The Telecommunications Act of 1996, moreover, dictates that the quality of these services shall be "reasonably comparable" to those available in urban areas and that they shall be available at rates that are "reasonably comparable" to rates charged for similar services in urban areas. In prior access reform proceedings that affected small carriers the Commission decided to further its universal service goals by devising a different set of rules for rate of return carriers. The Commission recognized that the difficult rural markets these carriers serve dictated a need for rules that provide a stable regulatory environment and reasonably predictable assurances of these ROR companies' revenue requirements. The universal service goals of the Act can be accomplished here by following this approach in the course of intercarrier compensation reform.

Consistent deference to the goal of universal service suggests that reform take into consideration the different impact that bill and keep or given rate levels will have on rural consumers and rural telephone companies. Deference to the unique differences between large RBOCs and the smaller rural telephone companies and among the various small companies is also required by the Regulatory Flexibility Act. That law requires the Commission to consider less burdensome alternatives offered by the public, take steps to minimize any significant economic impact on the small companies and to describe what those steps are. The public record already before the Commission contains alternatives that are less burdensome for "small entities" than others and it is expected that other alternatives will be offered in the course of the proceeding. For example, both the ARIC and EPG plans propose unified rates but they present alternatives to bill and keep, a regime which threatens the service and rate comparability standards of the Act's universal service provisions and which violate the substance of the RFA by failing to take account of significant adverse economic impacts on the rural telephone companies that are "small entities." NTCA has already provided data in the record that shows that bill and keep will result in an average monthly increase of $22 for rural consumers served by rural ILECs. The data also shows an adverse impact on the small companies. Small companies with less than 100,000 lines would suffer an overall revenue decrease of $22.16 per line per month.

These adverse impacts go beyond the effects on interstate revenues and consumer increases in the SLC. The impact on state rates and the separations issues raised by the likely need to reallocate costs between the federal and state jurisdictions requires involvement in the decision making by a Section 410(c) Joint Board. Coordination with the states should occur even if the statute did not require it. NTCA has shown that the bill and keep impact on intrastate revenues is greater than it is on interstate revenues. For rural ILECs alone, the total annual impact of imposing bill and keep would be $1.139B at the intrastate level and $884M at the interstate level. Local rates will obviously be impacted and the states will have to deal with the fall out from reform after the fact if they are not involved before the fact.

No one plan submitted by other parties addresses all of NTCA's concerns. Sufficient compensatory mechanisms, an accounting for differences between and among rural telephone companies and adequate transitions for small companies are essential for the NTCA membership. Ultimately, the Commission will need to craft a solution that passes the simplicity test without sacrificing the goals of the Act, particularly universal service. Bill and keep fails that test. It is based on the economic assumption that access, termination and transport costs are not traffic sensitive. That assumption is not factual. The network may be evolving towards a packet switched world but, for now, circuit switching is still being utilized to switch traffic and switches are traffic sensitive as shown by the analysis prepared for NTCA by Vantage Point and submitted with these comments.

Some plans commendably address the need to create a cost recovery mechanism to replace revenues lost as a result of rate restructure. NTCA agrees that a mechanism other than a usage sensitive charge may be needed to ensure recovery of the revenue requirement of rate of return carriers. The plans that provide for outright portability of this recovery mechanism to any competitive eligible telecommunications carrier fail to show how such an expansion of universal service is justified. Neither universal service nor competition will be advanced by converting a rate element designed to recover revenue deficiencies into a universal service support mechanism available to any CETC serving an ILEC congruent area. It would be disastrous to superimpose a new portable mechanism on the high cost support regime which is already burdened with portability rules that have ballooned the fund and that contain little or no means to verify the relationship between the support received and the costs for service to rural areas served by certain CETCs. That regime is presently under review on several fronts and adding a new portable mechanism will only exacerbate the high cost issues that remain to be resolved in other proceedings pending at the Commission.

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The National Telecommunications Cooperative Association (NTCA)[1] submits these comments in response to the Commission's Further Notice of Proposed Rule Making (FNPRM) in the above-referenced docket. [2]

I. INTRODUCTION

Intercarrier compensation is a complex and challenging subject matter. The current regulatory arena creates opportunity for arbitrage and distortions in the marketplace. The need for reform is undeniable. Today there are many differences in the rates charged by carriers to carriers for access and termination of calls depending upon the regulatory classification of traffic and the carrier. These regulatory classifications currently fall into the three categories based on the cost and distance to transport and terminate a call: interstate toll, intrastate toll, and local reciprocal compensation. Many

[1] NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents more than 560 rural rate-of-return regulated telecommunications providers. All of NTCA's members are full service incumbent local exchange carriers (ILECs) and many of its members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a "rural telephone company" as defined in the Communications Act of 1934, as amended (Act). NTCA's members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

[2] Developing a Unified Intercarrier Compensation Regime, *Further Notice of Proposed Rulemaking*, CC Docket No. 01-92 (rel. March 3, 2005) (FNPRM).

competitors are exploiting these regulatory classifications in a manner that inappropriately takes advantage of lower rates or arrangements that enable them to avoid paying for the use of other carriers' facilities. Traffic is being routed in an indirect manner to mask its true origin and it is being delivered as traffic with the lowest regulatory rate. This regulatory arbitrage has undermined the integrity of the existing intercarrier compensation process.

NTCA agrees with the Commission that it is time for the rules to be reviewed and reformed and commends the Commission for attempting to tackle the issues in a comprehensive manner. A comprehensive approach is needed as new rules could create new opportunities for regulatory arbitrage and new distortions in the marketplace unless the Commission anticipates these possibilities. The complexity of the task at hand is evidenced by the number of plans and principles submitted to the Commission.[3] It is also critical that the Commission proceed cautiously to avoid favoring any technology or new competitors at the expense of incumbents, or large carriers at the expense of small or rural providers.

[3] The Intercarrier Compensation Forum (ICF) tried but failed to develop a comprehensive plan that could be endorsed by most of the industry. Many companies participated in the development of a plan, but only a few who participated signed off on the final plan recommendations. The signatories were interexchange carriers, some large competitive local exchange carriers (CLECs), one regional Bell company and a state network. Missing were CMRS, rural, small CLECs, the other three regional companies, cable, Internet and video content providers.

Two Rural ILEC groups submitted plans: the Alliance for Rational Intercarrier Compensation (ARIC) and the Expanded Portland Group (EPG).

Small CLECs, wireless carriers, the National Association of State Utility Consumer Advocates (NASUCA), and two rural ILECs also submitted plans. In addition, the National Association of Regulatory Consumer Advocates (NARUC) submitted guidelines.

There is some agreement among the plans. First, they all agree that reform is needed. They all agree that rates should be unified in some way by bringing interstate access rates, intrastate access rates and reciprocal compensation together. Beyond that, there is a wide degree of divergence.

II. A REVIEW OF PROPOSALS SUBMITTED TO THE FCC

NTCA has not endorsed any specific proposal because of significant differences in the situations facing individual rural ILECs. Rather NTCA recommends that reform be based upon principles contained in NTCA's blueprint that is described *infra*.
It is NTCA's objective to ensure that intercarrier compensation reform does not compromise services to rural consumers and does not jeopardize the financial integrity of rural carriers.

Intercarrier Compensation Forum (ICF)

The ICF plan is a modified bill and keep proposal. NTCA opposes the ICF plan because it does very little to resolve fundamental concerns of many rural ILECs. Approximately 75% of today's intercarrier compensation revenues have to be recovered from end users or universal service funds.

It is a very complicated plan that requires eleven network diagrams to describe carrier interconnections and obligations under the "network edge" concept described in the plan. Adoption of the ICF plan will lead to interminable disputes. Every new nuance or arrangement that appears will require extensive examination before responsibilities can be determined. It is apparent that the ICF did not examine network arrangements that are actually employed by rural ILECs, small CLECs or small CMRS providers. If adopted, the ICF plan is destined to create a lot of controversy and will be very difficult or impossible to administer. The plan introduces the network diagrams with these words: "Typical Interconnection Arrangements in Today's Environment"[4] along with a disclaimer: "The POI locations are for illustrative purposes only. POI locations may vary

[4] ICF proposal at slide 57, CC Docket No. 01-92, *ex parte* August 13, 2004.

for each call flow, are subject to various disputes and varying state arbitration decisions."[5] It is not clear how the ICF plan would be modified as new network configurations emerge that do not fit the architecture assumed by the plan. The ICF plan would prove unworkable for NTCA members and would thus compromise rural consumers.

The concept of a rural carve out described in the plan as applying to a Covered Rural Telephone Company (CRTC) is a plus for rural ILECs, but it is inadequate. NTCA estimates that about 25% of the impact of bill and keep would be offset by the CRTC proposal.[6] The CRTC concept addresses transport outside of the rural ILEC's service area, but it does not ameliorate high costs incurred within the CRTC network. To the extent these costs are currently recovered through existing intercarrier compensation mechanisms, state and interstate access charges, and reciprocal compensation, cost recovery would shift to consumers and universal service support. Another concern for many rural carriers is the treatment afforded to tandems when they are used to provide centralized equal access for many rural ILECs. The ICF plan fails to adequately address this issue. The ICF plan defines the CRTC "edge" to be located at the tandem rather than the service area boundary. Under this plan, rural ILECs that use centralized equal access would incur a new obligation and bear the cost of transport beyond their service area. This would impose costs on rural ILECs that penalize, rather than reward, network efficiency.

[5] *Id.*
[6] The estimate was made from analysis of data collected in NTCA Intercarrier Compensation Data Request.

<u>Expanded Portland Group (EPG)</u>

The EPG is a group of small and mid-sized rural LECs. The EPG plan addresses intercarrier compensation from a rural perspective. The plan has three major parts. First, EPG calls for truth in labeling. Second, EPG seeks to unify interstate and intrastate access charges at prevailing interstate rates and proposes the creation of an Access Restructure Charge (ARC) to offset revenue losses from reduction of intrastate access charges. Lastly, EPG proposes a new capacity-based intercarrier compensation mechanism consisting of "ports" and "links" for all dedicated transport.

NTCA agrees with EPG that the FCC should move immediately to stop the abuses that are occurring because carriers are delivering traffic to ILECs for completion without paying termination charges. Regardless of the decision on other matters in this proceeding, the FCC should act immediately to compel carriers to include sufficient information to permit timely and accurate billing. Under current rules, ILECs must handle this traffic, even if they are not compensated. This must be corrected.

EPG's proposal to unify interstate and state access charges at interstate rates is a reasonable way to eliminate major differences in rates that are due to jurisdictional separations rather than underlying costs. The EPG plan calls for the creation of the ARC. "The purpose of the ARC is to compensate regulated carriers for the usage of their local networks. It allows regulated carriers subject to mandated reductions in intrastate access charges to continue to recover the current contribution of intercarrier revenues to overall cost recovery, including the higher costs of transporting traffic over rural networks."[7] As

[7] EPG Plan, CC Docket No. 01-92, *ex parte* Nov. 2, 2004, p. 22.

such, EPG argues the ARC should not be portable. NTCA agrees that an ARC or any other mechanism designed to recover residual access revenue should not be portable.

Lastly, EPG proposes a capacity-based charge to replace per minute access charges where there are dedicated trunk groups. This is a theoretically intriguing idea. However, there are obstacles to adopting a flat-rated scheme. There is a degree of arbitrariness in establishing the fixed charge. For example, how does that charge vary as capacity increases? What is the basic unit? What are the multiples? Relationships among speeds are not likely to remain the same. The idea seems simple, but the implementation will be very difficult. A good example is the speed commonly used to access the Internet and now the broadband network: as the years go by, the basic entry speed is increasing -- 9.6 Kbps, 14.4 Kbps, 28.8 Kbps, 56 Kbps, 200 Kbps, 1 Mbps, 3 Mbps, 10 Mbps, 100 Mbps, 1 Gbps. Nonetheless, the concept should be aired out thoroughly. The merits and weaknesses of the approach should be examined in a public forum. NTCA welcomes such a dialog, but, for the immediate future, NTCA is committed to usage sensitive rates for access for circuit based facilities. However, the question of what is appropriate for IP networks should be examined now.

Alliance for Rational Intercarrier Compensation (ARIC) – Fair Affordable Comprehensive Telecom Solution (FACTS)

The ARIC-FACTS Plan is a comprehensive plan developed by rural ILECs serving high-cost areas.[8] The plan has much to offer for rural ILECs. FACTS balances cost recovery among all three revenue sources: monthly customer bills, intercarrier compensation and universal service support.

[8] ARIC-FACTS Plan, CC Docket No. 01-92, *ex parte* November 4, 2004.

One of the key principles underlying FACTS is retention of retail/wholesale relationships among carriers. NTCA agrees with the position that the retail service provider should pay (RSPP) when it uses the network functionality of another carrier. Today wholesale carriers, such as interexchange carriers (IXCs), pay access charges to ILECs to originate and terminate calls that they sell to their retail customers. These access charges are payment for use of distribution facilities owned by ILECs. NTCA agrees that compensation is due to an ILEC where retail/wholesale relationships exist with wholesale carriers offering retail telecommunications to customers connected to the IXC by the ILEC network. This includes the distribution network as well as transport and switching services.

NTCA also agrees with ARIC that both federal and state jurisdictions should be maintained. It is difficult to strike the appropriate balance between federal and state jurisdictions, but it is necessary. Differences among local carriers are best handled at the state level. States should be encouraged to follow federal guidelines, but should not be placed in a straight jacket that precludes state regulatory agencies from exercising legitimate authority. The high degree of interaction between federal and state jurisdictions incorporated into the FACTS Plan makes the plan complicated, but it does assure consideration of both federal and state interests throughout the process. It is premature for NTCA to endorse the State Equalization Fund (SEF). However, NTCA believes the SEF concepts should be debated in a Joint Board proceeding.

One area of concern for NTCA is local rate rebalancing. There is disagreement whether rebalancing is necessary and, if so, how to accomplish rebalancing. FACTS calls for each state to rebalance rates within a national rate range. This contrasts with the

EPG that seeks a uniform national benchmark for local rates. NTCA is not opposed to rebalancing of local rates if it is part of an overall reform plan that retains revenue neutrality for each rural ILEC, accommodates differences in calling scopes, and considers differences in funding capability among the states.

The FACTS Plan is the only plan to seriously address the future Internet Protocol (IP) environment. The Commission needs to consider the emerging IP world in this proceeding. The issues raised by ARIC are relevant to the future of the telecommunications industry. Intercarrier compensation reform should not be accomplished without due consideration for the future. NTCA agrees with ARIC that market power considerations in the IP world should be examined now.

All in all, the FACTS Plan presented by ARIC is a comprehensive proposal worthy of serious consideration.

Cost-Based Intercarrier Compensation Coalition (CBICC)

CBICC proposes "the use of the state established TELRIC rate for local switching, transport, and termination."[9] A single rate would be set for specific functions by each ILEC in each state. The plan assumes continuation of the calling party network pays (CPNP) system and minutes-of-use rates. Revenue losses from lower per minute rates would be offset by increases in the SLC, up to a capped amount, and from universal service funds. Universal service support would only be available to a carrier charging the full capped SLC rate. The SLC cap would increase up to 50 cents per year until SLC revenue eliminates the use of universal service funds. VoIP traffic that originates or terminates as circuit-switched traffic is included.

[9] CBICC Proposal, *ex parte*, CC Docket 01-92, September 2, 2004 at 1. TELRIC is total element long run incremental cost.

NTCA agrees with CBICC that the CPNP system and minutes-of-use rates should be continued, and that VoIP traffic that originates or terminates as circuit-switched traffic should be compensated. However, NTCA does not support the CBICC proposal to require the mandatory use of TELRIC. NTCA also disagrees with perpetual annual increases in SLCs.

If TELRIC is used, it should be optional rather than mandatory. TELRIC is neither the most equitable nor the most efficient method of measuring small carriers' costs. Telecommunications carriers must make their decisions in the real world, subject to real, non-theoretical constraints, and can only choose from technologies available at that point in time. In accordance with Section 254(k) of the Telecommunications Act of 1996, allowance must be made for sharing of joint and common costs. Use of forward looking mechanisms, which are not based upon real world conditions, will result in under recovery of legitimately incurred costs.[10] Further, it is extremely difficult to validate a forward-looking cost model; forward looking costs have inherent estimation problems for rural carriers; and the "theoretical incentive producing" advantages of a forward looking cost standard are unlikely to materialize in practice.[11]

NTCA opposes perpetual annual increases in SLCs. In high cost areas, such a policy would result in unaffordable consumer rates. SLCs in high cost areas would be much greater than SLCs in non-rural areas. The resulting SLCs would not be comparable or affordable. These defeats the purposes of universal service support. Rural SLCs should be no greater than non-rural SLCs.

[10] *See*, for example, a Verizon *ex parte* showing that TELRIC rates are below cost and discourage investment in network facilities (Verizon *ex parte*, WC Docket 03-173, October 16, 2003).
[11] *See*, Dale Lehman, "The Role of Embedded Cost in Universal Service Funding," White Paper written for NTCA, October 2004 (available online at www.ntca.org/content_documents/ATTACHMENT_A.pdf).

Home Telephone Company and PBT Telecom (Home/PBT)

This plan addresses the fundamental concern common to rural ILECs and raised in all of the rural proposals, namely, compensation is due to a rural ILEC when their network is used to originate and terminate telecommunications services sold by others to consumers that are rural ILEC subscribers. Home and PBT explain that, under their plan, the "access charges" are placed on the number which allows connectivity to the network.[12] Home and PBT would replace per minute charges for access and reciprocal compensation with connection-based intercarrier charges. While NTCA does not endorse every element in the specific proposal made by Home Telephone and PBT Telecom, NTCA concurs with the goal.

NTCA is sympathetic with the Home Telephone and PBT proposal, but the proposal overly simplifies a very complex problem by replacing all per-minute charges with connection-based charges. Circuit-switched networks are not likely to disappear as quickly as the proposal assumes. NTCA believes it is reasonable to retain usage sensitive rates for circuit-switched traffic while determining the basis for measuring and charging for IP based traffic.

NTCA supports a comprehensive approach to intercarrier compensation reform. Home Telephone and PBT were correct when they wrote:

> "Notwithstanding, the Companies [Home Telephone and PBT Telecom] recommend the Commission resist the urge to adopt a piecemeal decision-making process in this proceeding. This issue is too critical to be resolved by devolving this rulemaking into an *a la carte* plan. It is absolutely essential the Commission make sure the plan ultimately adopted is consistent throughout and clearly recognizes the concerns of rural telephone companies that are crucial participants

[12] Home/PBT Proposal at iii.

> in achieving the goals of Congress concerning the provision of telecommunications services universally at reasonable and affordable rates."[13]

NTCA supports a residual non-portable cost recovery mechanism to offset losses in intercarrier compensation revenue due to unification of rates. The high cost connection fund (HCCF)[14] proposed by Home Telephone and PBT is such a mechanism and it is consistent with NTCA's view that the Commission will need to establish a mechanism to recover lost revenues attributable to changes.

Western Wireless Proposal

This plan would reduce per-minute compensation rates to zero, i.e., pure bill-and-keep, in equal steps using targeted reductions over a four-year period, with a six-year transition period for small rural incumbent LECs.[15] The Western Wireless proposal also includes default network architecture rules based on carrier "edges" or mutual meet-point arrangements.[16] The plan relies on carrier-to-carrier negotiation of interconnection agreements pursuant to section 251(b)(5) of the Act.[17] The Western Wireless proposal also would replace all existing universal service support mechanisms with a unified high-cost mechanism based on forward-looking costs.[18] This new support would be fully portable to all designated ETCs and additional portable funds could be dispersed in states with forward-looking costs higher than the national average.[19]

[13] *Id*. pp. 2, 3.
[14] *Id*. p. 15.
[15] Western Wireless Proposal at 13, CC Docket No. 01-92, *ex parte* November 18, 2004.
[16] *Id*. at 12. For interconnection between hierarchal incumbent LECs and other carriers, the proposal permits interconnection at the carrier "edge" or under a shared transport arrangement at the option of the competitive carrier. *Id*. The proposal also requires incumbent LECs to offer transit service at capped rates.
[17] *Id*. at 10, 20.
[18] *Id*., p. 15.
[19] *Id*., Western Wireless states that, at the end of the four-year transition, the fund would be "right-sized," with "sufficient" support, but provides no further detail on fund size and support amounts. *Id*.

NTCA opposes the Western Wireless proposal and has numerous concerns with it. First of all, it is a bill and keep plan. NTCA estimates that pure bill and keep would shift over $2 billion from intercarrier compensation to end users and universal service support.[20] Adoption of bill and keep would harm rural customers and rural ILECs and threaten the availability of advanced services in high cost areas. The extension of a transition period from 4 years to six years for rural carriers is not curative. The end point is bill and keep.

The default network architecture proposed by Western Wireless would require rural ILECs to transport traffic beyond their service area: "In general, each carrier bears financial responsibility for delivering its originating traffic to another carrier's "edge," in a LATA."[21] Rural ILECs serve specific geographic areas and should not be compelled to carry traffic outside their designated local service area. The Commission should not impose new transport obligations on rural ILECs.

The concept of carrier-to-carrier negotiation of interconnection agreements has not worked well between rural ILECs and wireless carriers because wireless carriers insist on "must carry" interconnection obligations without adequate compensation. If there is no agreement, traffic is passed to rural ILECs for completion without any compensation. NTCA supports full interconnection with compensation based on actual cost.

NTCA does not support changes to the existing high-cost and access universal service mechanisms in the context of this proceeding. The Commission is already

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[20] Attachment to NTCA *Ex Parte* letter to Marlene H. Dortch, January 6 , 2004, *In the Matter of Developing a Unified Intercarrier Compensation Regime,* CC Docket No. 01-92 (NTCA January 6 *Ex Parte*) at slide 61.
[21] *Id.* p.12.

considering these issues in the cost basis proceeding.[22] NTCA opposes portability because portable support is based on ILEC costs and not related to the costs of the competitive eligible telecommunication carrier (CETC). If a CETC meets established criteria and needs support it should receive support based on its own costs.

National Association of State Utility Consumer Advocates (NASUCA) Plan

NASUCA proposes a unified rate of $0.0055 per minute to be phased in over 5 years. Reciprocal rates below the target rate would remain at current levels. State commissions would be encouraged to match the target rate. Existing interconnection rules and wholesale retail relationships would be unchanged. Also USF mechanisms and current SLC caps would be retained.[23]

NTCA's concerns with the NASUCA proposal involve the unified rate to be used for all carriers because rural ILEC costs are much higher than NASUCA's proposed rate. This is especially troubling because NASUCA "urges the Commission to reject efforts to guarantee current revenue streams."[24] It is not clear what NASUCA means by "guarantee". Reliance on the regulatory compact that makes service possible is not equivalent to a "guarantee". Rural areas are served by rate-of-return (ROR) carriers that are able to bring adequate services to consumers precisely because they can operate in a regulatory environment that provides a means of relative certainty and that ensures financial viability. This policy recognizes the unique differences between rural and urban areas. It has served the nation well and the Commission should not deviate from it in this proceeding.

[22] *See*, FCC 04J-2, CC Docket 96-45, released August 16, 2004.
[23] FNPRM, ¶ 56.
[24] *Id.*

III. NTCA'S BLUEPRINT FOR INTERCARRIER COMPENSATION REFORM

The Commission states as its goals in this proceeding: promoting economic efficiency, encouraging the efficient use of, and investment in, telecommunications networks, and the development of efficient competition.[25] It also states that one of its "most important policies" is to promote facilities-based competition in the marketplace.[26] While efficiency and competition are central themes in the FNPRM, there are other important principles at stake. NTCA recommends adoption of reforms based on five other principles. The principles are NTCA's blueprint for reform.[27] It follows and is the basis of NTCA's positions.

NTCA believes the Commission should:

1. Adopt rules that include a different set of regulatory policies for rural telephone companies to ensure that their networks remain viable;

2. Adopt rules for rural ILECs that include some charge that provides for carriers to compensate each other for the use of one another's network;

3. Adopt rules that preserve and sustain universal service;

4. Adopt rules that preserve rural ILECs' option to operate under rate-of-return regulation; and

5. Adopt rules that encourage investment in a network infrastructure capable of delivering high quality broadband services in all areas of the nation.

[25] *Id*.
[26] *Id*.
[27] NTCA *ExParte* Letter to Marlene H. Dortch, December 9, 2004, *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92.

IV. THE COMMISSION MUST RECOGNIZE RURAL DIFFERENCES AS IT CONSIDERS NEW RULES TO PROMOTE EFFICIENCY AND COMPETITION

The first point in NTCA's blueprint position is that new rules should include regulatory policies for rural telcos that ensure their networks remain viable so that they can continue to provide services to rural consumers. Financial viability means carriers have the capability to invest in the network infrastructure to offer consumers the telecommunications services they want. The Commission must recognize the rural differences as it addresses efficiency and competition in the context of reform. The Regulatory Flexibility Act (RFA) provides the Commission with a legal basis for treating small companies differently.[28] As described in paragraph 155 of the FNPRM, all NTCA member companies are "small entities" for purposes of the RFA. It is entirely appropriate for the Commission to accommodate small entities with unique rules that apply in stipulated circumstances.

Rural ILECs are as different from each other as people are from one another. Some are small and some are tiny. Some are near major cities and some are hundreds of miles from any metropolitan area. Some serve towns and some just serve areas outside towns. Some are in the East and some are in the West. Rural ILECs serve high cost areas, and, as a group, are different from the large carriers serving low cost urban areas.

A "one size" solution that may work for large urban carriers cannot possibly meet the diverse needs and variable cost structures of rural carriers. In promoting efficiency and competition, the Commission must take care to avoid gross generalizations and assumptions based on large carrier operations in highly-populated areas. The average

[28] 5 U.S.C. § 604.

population density for a rural telephone company study area is only 13 persons per square mile compared with 105 persons per square mile in non-rural carrier study areas.[29] On average, non-rural carriers serve 128 lines per square mile, while rural carriers serve 19 lines per square mile—a ratio of nearly seven to one.[30] As a direct result of greater population dispersion, rural carriers average far fewer lines per local switch—1,254, compared to an average of 7,188 for non-rural carriers.[31] Rural carriers invest an average of just over $5,000 per loop, while non-rural carriers invest approximately $2,800.[32]

While the rural statistics show vast differences between rural service areas and non-rural service areas, the statistics represent averages, not extremes. Many NTCA members serve areas that are much more sparsely populated than the average and consequently have costs that are significantly higher than those of the average high cost company.

New intercarrier compensation rules must be robust enough to accommodate both the differences between rural and urban carriers and markets and a wide range of different rural circumstances. At the end of the day, the Commission must gauge the success of its reform by the extent to which it preserves universal service. Rural carriers will remain financially viable and continue to serve rural and high-cost areas only if <u>each</u> rural carrier is able to recover its costs for delivering a full range of comparable telecommunications services and at a cost to consumers comparable to what is available in urban areas.

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[29] *In the Matter of Federal-State Joint Board on Universal Service*, Rural Task Force Recommendation to the Federal-State Joint Board on Universal Service, CC Docket No. 96-45, p. 11 (rel. Sept. 29, 2000).
[30] Rural Task Force, *The Rural Difference*, White Paper 2, January 2000. (available online at <u>www.wutc.wa.gov/rtf/rtfpub.nsf?open</u>).
[31] *Id.*
[32] *Id.*

V. THE COMMISSION SHOULD RETAIN SOME FORM OF INTERCARRIER COMPENSATION FOR RATE OF RETURN CARRIERS

NTCA's second blueprint position is that rules should include a mechanism for carriers to compensate each other for the use of one another's network. NTCA supports retention of intercarrier payments for ROR carriers. Intercarrier payments are consistent with cost causation principles and universal service goals. Carriers, such as IXCs and VoIP providers, that utilize others' network functionalities to provide retail services to customers cause costs and should bear those costs. These retail service providers should not escape their obligation to compensate other carriers under the guise that the end user pays anyway. One carrier's end user is not every carrier's end user. Thus, the ILEC's end user should not bear costs associated with services sold by an IXC or another LEC. The best way to ensure that costs are recovered from appropriate cost causers is to impose the obligation to pay on the retail service provider utilizing any given network functionality of another carrier.

A. Pure Bill And Keep Violates The Law And Is Bad Public Policy

A pure bill and keep arrangement is inappropriate for rate of return (ROR) carriers for a variety of legal and policy reasons. At the outset, a bill and keep regime does not permit proper allocation of admittedly vastly variable ROR carrier joint and common costs attributable to the access and termination services offered by these companies. Section 254(k) of the Telecommunications Act of 1996 ("Act")[33] requires that the Commission establish necessary cost allocation rules and guidelines to ensure that universal service support does not subsidize services subject to competition. The

[33] 47 U.S.C. § 254(k).

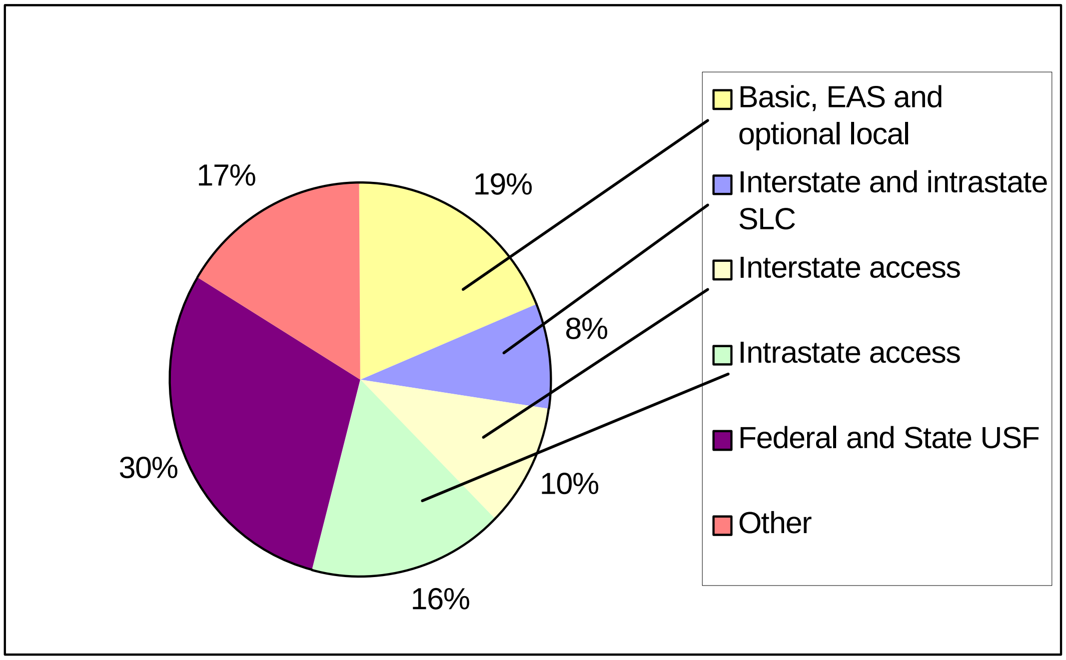
exchange access, transport and termination services offered by carriers to each other are subject to competition and may not be subsidized *de facto* as a result of rules that do not permit recovery of joint and common costs from the carriers that cause these costs by utilizing others' network functionalities.

The drafters of the Act clearly contemplated that there would be a form of compensation for access and termination. Congress enacted Section 251 to promote local competition, but it carefully provided compensation mechanisms for the new arrangements in both Section 251 and 252. Section 254(k) also contemplates some obligation for payment by carriers utilizing others' facilities. It requires that the Commission establish rules to ensure that services supported by universal service bear no more than a reasonable share of joint and common costs.

Figure 1 below shows that, on average, 30% of a rural telephone company's revenue stream already comes from universal service support. 26% comes from interstate and intrastate access, representing about $2 billion in rural ILEC access charge and reciprocal compensation revenues. An analysis of the individual responses in an NTCA data request reveals that 22% of study areas receive more than 40% of their revenue from universal service support and 7% of study areas more than 60%.[34] Thus, in addition to running afoul of Section 254(k), a pure bill and keep regime would place rural telco cost recovery at even greater risk than it is today due to the uncertainties associated with the universal service fund.

[34] *See*, NTCA January 6 *Ex Parte* in CC Docket No. 01-92 (NTCA January 6 *Ex Parte*). All references to NTCA Data Request Results refer to data submitted in the January 6 *Ex Parte* which is incorporated herein by reference and made a part of these comments.

Figure 1: Rural ILEC Revenue Sources



Source: NTCA Data Request Results

Under some proposals, revenues previously received from other carriers, and not now recovered from end users would be recovered through universal service support.[35] This would not only substantially increase the proportion of revenues rural companies will recover from universal service support; it would increase the burden on the Universal Service Fund, especially if a new mechanism is made portable.[36]

The elimination of all access charges and reciprocal compensation while retaining obligations for LECs to interconnect with and originate and terminate traffic for other telecom providers amounts to taking property without compensation. It is nothing more than granting non-owners of LEC facilities free use of those facilities. This is not an

[35] Western Wireless proposal at 7 and NASUCA proposal at 1.
[36] The proposed contribution rate for the second quarter 2005 is 11.1%. FCC, CC Docket No. 96-45, Public Notice, DA 05-648, rel. March 10, 2005.

example of a competitive market, but a regulated market. Companies who own assets demand compensation for the use of those assets.

Traditionally, local telephone company revenues have come from three basic sources: local rates, intercarrier compensation (access charges and reciprocal compensation), and universal service support. The careful balance of these three revenue sources has ensured that rural telephone companies are not unduly affected by rapid or unanticipated changes in any one source of revenues.

Reform should preserve a balance of revenue sources to prevent huge disruptions on a going forward basis. Carriers that jointly use facilities must thus pay for their "share" of use. There are costs involved in access, transport and termination and "zero" is not a fair share of the obligation to bear these costs. A "zero" cost is below actual cost and will encourage wasteful and abusive use of facilities. Free use is not good policy and will not promote efficient use of the network.

B. A Bill and Keep Regime Would Have a Disparate Impact on Rural Consumers

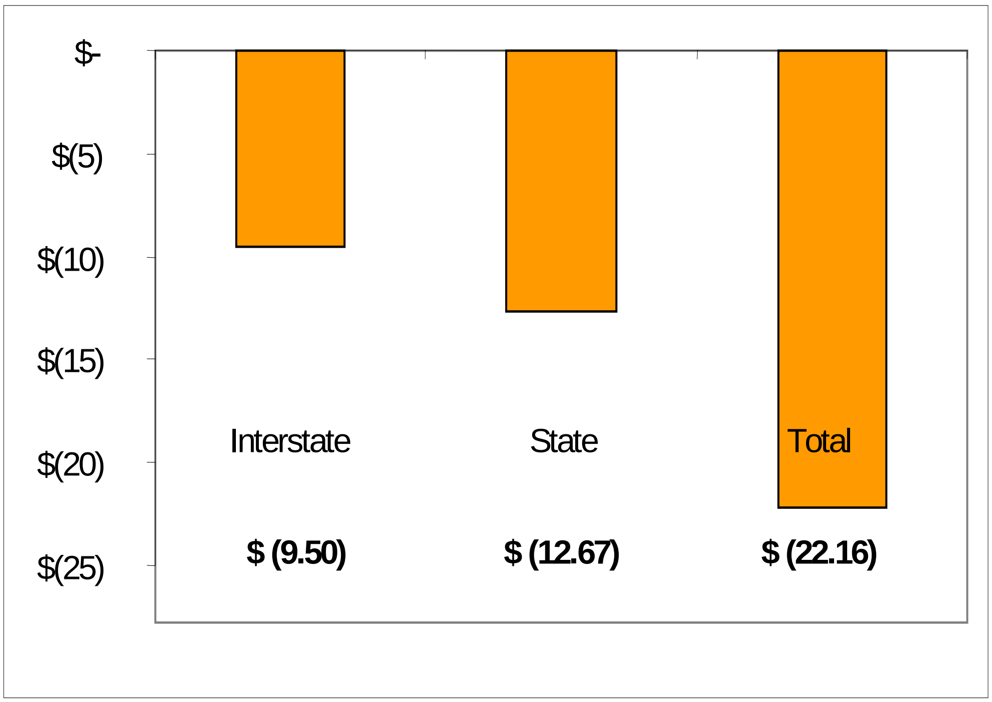
Data collected by NTCA in a 2003 survey of rural ILECs with study areas of less than 100,000 lines was used to estimate the impact of Bill and Keep on rural consumers. In particular, the impact of Central Office Bill and Keep (COBAK), as presented in Patrick DeGraba's Bill and Keep white paper, was examined.[37] NTCA estimated the aggregate impact on rural ILECS to be approximately $2 billion with the average

[37] *See,* NTCA January 6 *Ex Parte*. *Also,* Patrick DeGraba, *Bill and Keep at the Central Office as the Efficient Interconnection Regime*, Federal Communications Commission, OPP Working Paper No. 33, December 2000 (available online at ftp://www.fcc.gov/pub/Bureaus/OPP/working_papers/oppwp33.pdf).

monthly impact per line to be approximately $22 per line per month.[38] Rural subscriber rates cannot absorb a shift this large without damage to universal service.

Rural ILEC costs are higher than non-rural ILEC costs and the relative dependence on access charges amplifies the effect of COBAK for rural ILECs and for rural consumers.

Figure 2. COBAK Impact/Line



Source: NTCA Data Request Results

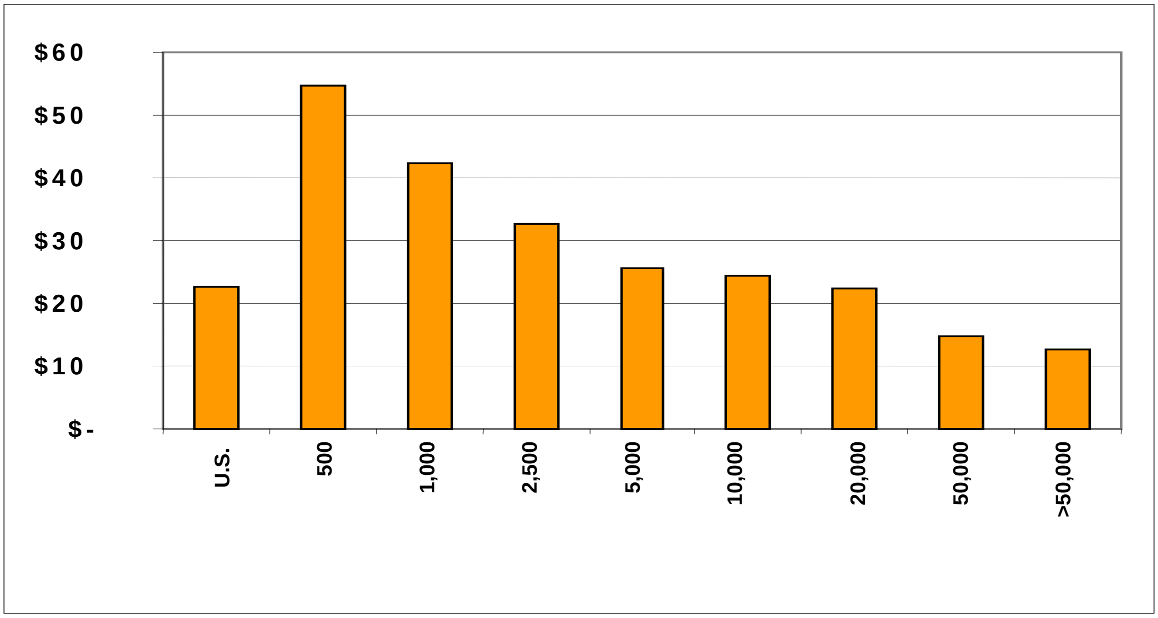
Figure 2 depicts the average decrease in monthly revenue per line for a rural ILEC with less than 100,000 access lines. If COBAK was adopted in both the intrastate and interstate jurisdictions, the average rural LEC impact would be $9.50 per line due to the elimination of interstate access charges and a corresponding impact of $12.67 per line for

[38] NTCA January 6 *ExParte* Notice, Jan 7, 2004, PowerPoint presentation, pp. 60 – 61.

the elimination of intrastate access charges. The total combined impact on study areas with less than 100,000 lines is estimated to be $22.16 per line.[39]

C. A Bill And Keep Regime Would Have A Disparate Impact On The Smallest Companies

Figure 3. Total COBAK Impact/Line by Size of Company



Source: NTCA Data Request Results

Bill and keep hits the smallest companies the hardest. Figure 3 illustrates this impact. This figure shows that the magnitude of the impact increases as the size of the company decreases. The impact for companies with less than 500 lines is more than $50 per line, while the impact for companies with more than 20,000 lines is less than $20 per line.[40] Thus, the average impact is much greater for the smallest companies. Furthermore, these are average impacts per line and the impact for some companies is much greater than average.

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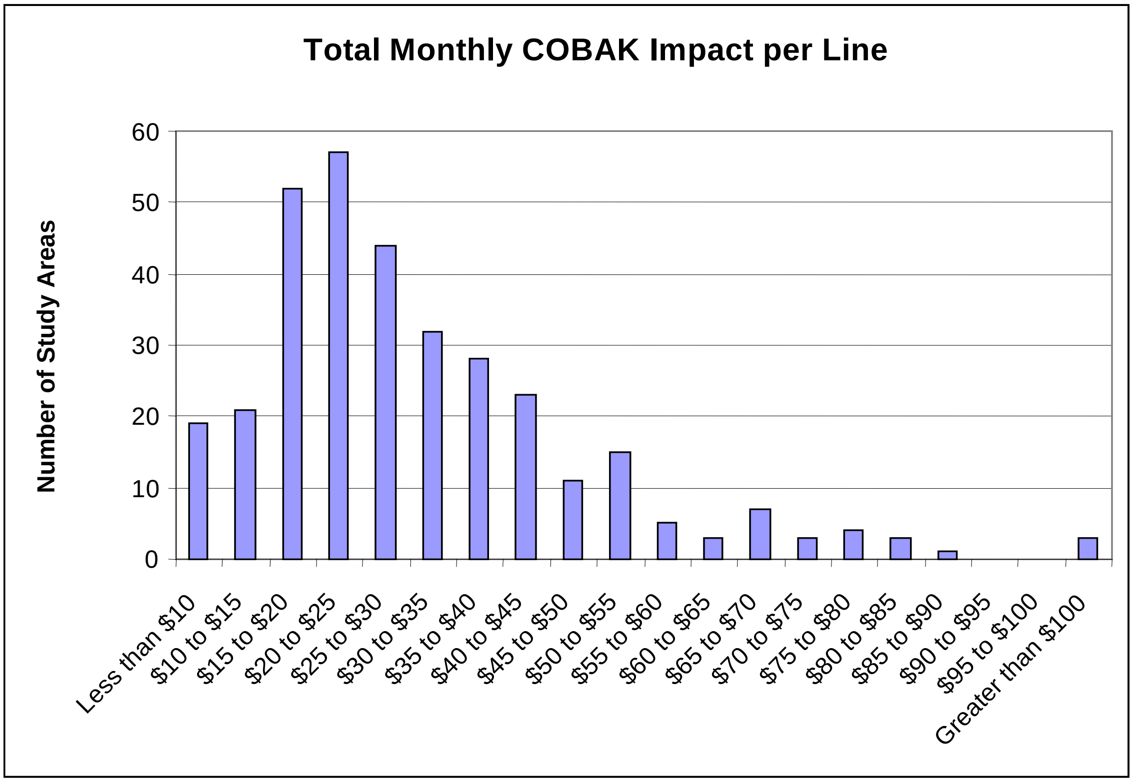
[39] NTCA January 6 *Ex Parte*.
[40] NTCA January 6 *Ex Parte*.

Figure 4. Variation in Per Line Impact



Source: NTCA Data Request Results

Figure 4 shows the degree of variation in impact by study area. There are 40 study areas--12% of respondents--with an impact of less than $15 per line, per month. And there are 29 study areas---9% of respondents---with an impact of more than $55 per line, per month. Almost 80% of the study areas have a monthly impact between $15 and $55. It is of particular interest to note that the distribution is skewed to the right, with three study areas having an impact of more than $100 per line, per month.[41]

[41] NTCA January 6 *Ex Parte*.

VI. THE PRESERVATION AND MAINTENANCE OF UNIVERSAL SERVICE IN RURAL HIGH-COST AREAS MUST BE A GOAL OF INTERCARRIER COMPENSATION REFORM

NTCA's third blueprint point is that rules should preserve and sustain universal service. The Commission's pro-competition policies should not take precedence over universal service goals and policies. The preservation of universal service must also be considered.[42] Although the Commission correctly recognizes this, NTCA is concerned that the Commission's competition focus will take precedence over universal service goals.[43] Any intercarrier compensation reform must have universal service as a primary goal, not something to be dealt with after the Commission determines how to promote competition.

A. The Comparability Requirements of Section 254 Must Be Considered In Establishing SLC Levels And Local Rate Benchmarks.

Any new rules that impact SLCs, or establish benchmarks must be promulgated in accordance with the law's universal service "comparability" requirements. Section 254(b)(3) provides that consumers in rural and high-cost areas should have access to telecommunications services and information services, including advanced telecommunications and information services, that are priced reasonably and comparably to similar services available to consumers in urban areas.[44] Similarly, Section 151 of the Act provides that all Americans, so far as possible, should have access to

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[42] Section 254(b)(3) states, "Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar service in urban areas." 47 USC § 254(b).
[43] FNPRM, ¶ 32.
[44] 47 USC § 254(b)(3).

telecommunications services at reasonable charges.[45] Thus, if the Commission subjects rural ILECs to mandatory decreases in intrastate and interstate access charges and increases in end-user rates, it must ensure that consumers living in rural, insular and high-cost areas have access to telecommunications and information services at rates that are reasonably comparable to those services and rates available to consumers living in urban areas.[46]

Any new increases in end-user rates must consider the impact on high-cost consumers and their ability to afford comparable telecommunications and information services. "If rates are too high, the essential telecommunications services encompassed in universal service may indeed prove unavailable."[47] If rates increase, it is conceivable that some households in high-cost rural areas that do not qualify for Lifeline and Linkup support would no longer be able to purchase telecommunications and/or information services. Raising end-user rates too high could also jeopardize the President's goal of making affordable high-speed Internet access available to all Americans by 2007, and the Act's goal to encourage the deployment of advanced telecommunications capability to all Americans on a reasonable and timely basis.[48]

The Commission must therefore be very sensitive to subscriber rate increases and continue to ensure affordable and comparable rates to all Americans. SLC caps will likely be necessary to promote competitive neutrality and preserve affordable consumer rates. If the Commission transitions end-user rate increases with corresponding access

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[45] 47 U.S.C. § 151.
[46] 47 U.S.C § 254(b)(3).
[47] *Qwest v. FCC,* 398 F.3d 1222, 10th Cir., Feb. 23, 2005, at 29 (Qwest II). This case can also be found on the FCC's Web page as *Qwest v. FCC*, 10 Circuit Case No. 03-9617.
[48] 47 U.S.C § 706 provides:

charge decreases, it must quantify and fully consider the rate impact on rural, insular and high-cost consumers. End-user rate increases, whether set through benchmarks or not, should also accommodate differences in the calling scopes in rural areas. Subscribers should receive some value from increases in their local rates and/or SLCs through expanded local calling areas.

B. Intercarrier Compensation Reform Must Include A Mechanism For The Recovery of Displaced Rural Telco Revenues

NTCA estimated the impact of eliminating state and federal access charges and reciprocal compensation to be $2 billion per year or $22 per line per month for NTCA members and an average basic residential local rate of $12.83 per month.[49] This compares to a national urban rate of $14.57.[50] If local rates were rebalanced to equal the urban rate, more than $1.7 billion would remain to be recovered through the universal service fund.

Telecommunications is a capital intensive business requiring the investment of large sums of money to build and maintain facilities. This is true in urban areas and even more so in rural areas. Universal service is an essential component of revenue for high cost areas. Rural telephone companies have been the key to universal service in high-cost areas because the Commission has adopted universal service support mechanisms and a regulatory regime that recognizes the need for these companies to remain financially viable. These companies will not be able to keep up their levels of investment without access charges, adequate cost recovery and a strong universal service program that targets support to the carriers that build telecommunications infrastructure in rural

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[49] NTCA January 6 *Ex Parte*.
[50] FCC, Statistics of Common Carriers, 2003/2004 Edition, Table 5.11, p. 193.

areas. Rural ILECs will not remain financially viable if they are forced to recover their costs from only their end-users. Universal service support is essential to enable rural Americans to gain access to advanced services. Any reform that displaces revenues must acknowledge and include mechanisms to make up for deficiencies; otherwise deficiencies will lead to insufficient investment.

VII. REFORM MUST ACCOMMODATE THE REGULATORY REGIME UNDER WHICH RATE OF RETURN CARRIERS OFFER INTERSTATE ACCESS SERVICES

The fourth point in NTCA's blueprint is that rural ILECS must continue to have the option to operate under rate of return regulation.

A. Reform Should Be Tailored To Meet The Unique Needs Of ROR Companies.

Many economists are critical of rate-of-return regulation (RORR). It is argued that RORR provides an incentive to inflate investment. As a theory, the argument in favor of forward-looking cost (FLEC) instead of embedded cost based on RORR principles is intellectually satisfying. On paper, the rationale in favor of FLEC seems persuasive. The reality is much less attractive than the theory when it is applied to rural ILECs. These are very small companies. Approximately 85% of rural ILECS have less than 10,000 access lines. Price cap regulation based on FLEC and using a hybrid proxy cost model was arguably successfully applied to the large regional Bell operating companies (RBOCs) and a few other large ILECs, but is not appropriate for rural LECs.

Forward-looking cost may be an appropriate theoretical economic cost concept, but embedded cost remains the best means of estimating costs for small, rural companies. Embedded cost is the only feasible method for validating the predictability and sufficiency of cost estimates. Forward-looking cost models are, by definition, not designed to be 100% accurate. Errors in cost model methodology do not "average out" when applied to small companies. As a result, support levels are likely to be too low for some carriers and too high for others.[51]

While RORR is not perfect, it is a tool that has been found to be very useful to assess the financial requirements for regulated companies when the market is not competitive. Tools to assess financial requirements for rural ILECs that are based on embedded investment are quite appropriate. RORR has the distinct advantage that it reflects what has actually been done, not what is nice to do. Like all companies, resources of the rural ILECs are limited and rural ILECs do not deploy equipment without a projected need. Lenders do not approve loans that are not accompanied by sound business plans. Many rural ILECs have RUS loans and are subject to extensive financial scrutiny.

Where RORR and other actual cost tools are employed, they provide a reasonable way to assess the financial sufficiency to determine the total amount of revenue a small carrier needs to be financially solvent. Anything less will doom consumers in high cost areas to a substandard network offering substandard service.

The interests of ROR carriers must be accommodated through the rate restructure process. The ROR carriers' unique needs were recognized by the Commission when it reformed access charges for ROR carriers in 2001. At that time, the Commission tailored its approach to the specific challenges faced by ROR companies serving rural and high-

[51] For a detailed analysis of the inherent difficulties of applying cost models to rural companies, s*ee*, Lehman, *op cit at n.11*.

cost areas.[52] It permitted the ROR carriers to continue to set rates based on the authorized rate of return of 11.25%. It balanced the goal of universal service with that of competition by creating an uncapped support mechanism to ensure that the rate structure modifications adopted in the MAG Order would not result in unaffordable end-user charges or under recovery of interstate access costs. The Commission removed certain implicit subsidies in access rates but it refused to adopt an unsupported or below cost per minute rate. It considered proposals for adopting a target rate for the per-minute access charges of rate-of-return carriers on either an optional or mandatory basis and rejected both approaches because neither assured cost recovery and both were insufficiently supported by cost data.[53] Recognizing the ROR regulatory regime under which the small carriers operated, it adopted, instead, a cautious approach, designed to prevent endangerment of ROR revenue streams.[54] It is significant that the Commission recognized that ROR carriers should not be forced to charge an arbitrary target rate but need the flexibility to establish access rates based on their own costs in the areas they serve.[55]

ROR regulation is a time-tested means of ensuring financial viability for small carriers serving hard to serve areas.[56] The ROR carriers have generally assumed carrier

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[52] *In the Matter of Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers Interexchange Carriers, CC Docket No. 00-256; Federal-State Joint Board on Universal Service, CC Docket No. 96-45; Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, CC Docket No. 98-77; Prescribing the (cont.) Authorized Rate of Return for Interstate Services of Local Exchange Carriers, CC Docket No. 98-166* (Second Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 00-256, Fifteenth Report and Order and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166 (Mag Order) 16 FCC Rcd 19613, 19620 (2001).

[53] *Id.* at 19651.

[54] *Id*. at 19620.

[55] *Id.* at 19621.

[56] Lehman, *op cit* 11.

of last resort obligations in return for rate of return regulation. Many are small and need the stability associated with ROR regulation and participation in NECA's interstate access tariff. They need adequate transitions to adjust to regulatory changes of any magnitude. The Commission recognizes that ROR regulation ensures the financial viability of small rural telephone companies and enables them to provide the services supported by universal service and invest in the infrastructure needed to deliver broadband. It also recognizes that ROR carriers' unique circumstances should be considered in any major restructuring of access.[57] The principles adopted in access reform for ROR carriers need to be applied in this proceeding. These principles are as valid and necessary in this restructure as they were in the 2001 restructure. Small carriers serving rural areas need cost recovery, stability and adequate revenue streams to ensure future investment in infrastructure. Changes adopted in this docket must take account of the ROR regime under which most ROR carriers operate.

B. New Rural Access Cost Recovery Mechanisms must meet the Sufficiency test of Section 254

The Commission asks whether rate of return carriers should be required to demonstrate that they are unable to recover their interstate-allocated costs from other sources before additional universal service funding is authorized for ROR carriers.[58] It is difficult to conceive of a lawful and/or equitable system that could condition the receipt of universal service for ROR carriers in the manner suggested by this question. The Commission's authority to design ratemaking methodologies does not extend to the

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[57] *See*, generally, FNPRM, Section II (F) I (b).
[58] FNPRM, ¶ 109.

authority to ignore legitimate interstate costs attributable to regulated services. Even if there is no universal service support mechanism attached to the reform of intercarrier compensation, it would be neither good policy nor law for the Commission to adopt a set of rules that limit a carrier's ability to recover costs associated with a particular interstate service such as exchange access and then force that carrier to recover those costs from other services.

The Commission's access reform orders have been based on the premise that cost-based rates promote efficiency, competition and consequent consumer benefits by aligning costs with cost causation.[59] Shifting interstate costs to other unrelated services offered by ROR carriers will only result in the very inefficiency that reforms purport to correct. Consumers of unregulated goods and services are consumers nonetheless and the properly allocated cost of regulated interstate services should not be shifted to them to reduce total universal service support or penalize companies that offer other services. Section 254(b)(5) of the Act restricts the Commission's ability to impose the obligation of recovering universal service costs from other services. It provides that "[t]here should be specific, predictable and sufficient … mechanisms to preserve and advance universal service."[60] Section 254(b)(5) thus binds the Commission to the obligation of designing a mechanism that provides "sufficient" support whenever it reallocates to universal service

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[59] *See,* MAG Order at 19615-19620, also, *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers,* cc Docket Nos. 96-262 and 94-1, Sixth Report and Order, *Low-Volume Long-Distance Users,* CC Docket No. 99-249, Report and Order, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Eleventh Report and Order, 15 FCC Rcd 12962(Interstate access Support Order), *aff'd in part, rev'd in part, and remanded in part, Texas Office of Public Util. Counsel et. al. v. FCC* , 265 F.3d 313 (5th Cir. 2001) [No. 00-60434, Sept. 12, 2001]

[60] 47 U.S.C.§ 254(b)(5).

or recharacterizes as implicit subsidies costs legitimately attributable to interstate or intrastate services.

C. ROR Carriers' Costs Should Be Based On Embedded Costs.

The Commission asks what legal standards should govern its decision. In particular, it asks for comment on the "additional" cost standard in section 251(b)(5) and the carve-out in section 254(g). It asks whether its authority to supersede the carve-out includes the authority to replace intrastate access regulation with some alternative mechanism.[61] The Commission should also ask how, if it supersedes the 254(g) carve-out with new regulations, it can preserve the cost standards upon which it has based access charges subject to Section 201 and 202 "just and reasonable" rate requirements.

There is no indication that Congress intended that the Commission's authority to supersede the carve-out would extend to a restructure that ignored the ROR regime and the determination of access costs under that regime. There is no support for the proposition that either interstate or intrastate access should now be governed by the "additional cost" 252(d)(2) just and reasonable pricing standard that applies to reciprocal compensation traffic.

The statutory language of the pricing standards that apply for interconnection, unbundled elements and reciprocal compensation, points to the opposite conclusion. Section 252(d)(1), which governs interconnection and network elements, reveals that Congress was aware that the determination of just and reasonable access charges subject to Section 201 involved a reference to ROR regulation. It took pains to indicate that just and reasonable rates for purposes of unbundled network elements and interconnection

[61] FNPRM, ¶ 63.

were to be based on cost determined "without reference to rate-of-return or other rate-based proceeding." It made the distinction and did not provide any explicit authority for utilizing either the 251(d)(1) standard or the "additional" cost standard in 252(d)(2) to supersede access charge standards governed by regulations promulgated under Sections 201 and 202.

Congress did not intend that the Commission resort to either the UNE or reciprocal compensation pricing standards in establishing new access charges to supersede those established prior to the Act. The Commission must respect the access policies it established in the MAG Order. It may provide alternative means of establishing the costs of access and other forms of intercarrier compensation but it must acknowledge the legitimacy of rates based on embedded cost and ROR regulation. Costs will not disappear as a result of restructure. ROR carriers will still need mechanisms to recover their actual costs. Furthermore, if the Commission adopts a bill and keep regime for all or some traffic, it must find a way to permit ROR carriers to recover the costs associated with traffic imbalances. Recovery from the carrier's end-users is an unfair way of spreading costs attributable to terminating imbalances that customers do not control.

D. Rate Restructure Should Not Be Used As A Subterfuge To Reduce Cost Recovery

There is widespread agreement that the Commission should adopt a uniform rate for the exchange of traffic between providers. There is a need for rationalizing the different rate structures that apply to different types of providers and different types of traffic. The simplification and unification of rates should not result in a deterioration of universal service support or in the creation of instability for rural providers delivering the supported services. The temptation to use rate restructure as a subterfuge to reduce ROR carrier revenues by regulatory fiat must be avoided.

It is critical that the Commission adopt an additional goal of revenue neutrality for ROR companies. Revenue neutrality is consistent with the Commission's other goals in the proceeding. These goals include simplification, the maintenance of universal service support, including the need to maintain reasonable and affordable end-user rates and the avoidance of rate shock, the promotion of competition, and competitive neutrality.[62] These goals are consistent with the object of revenue neutrality, which prevents market disruptions and ensures universal service through affordable and comparable rates for the customers of ROR carriers serving high-cost areas.

VIII. ANY NEW SUPPORT MECHANISM MUST INCLUDE INCENTIVES TO ENSURE BROADBAND DEPLOYMENT

NTCA's fifth blueprint position is that any new rules should encourage investment in a network infrastructure capable of delivering high quality broadband services in all areas of the nation. President Bush is pushing for the ubiquitous delivery of broadband services by 2007.[63] Although not technically a universal service as the term is now defined, the availability of broadband is not only important to ensure America's retention of its economic position, but is essential to ensure the viability of America's rural communities. Congress too recognized the criticality of broadband deployment in enacting Section 706 which requires that the Commission encourage the deployment of advanced telecommunications capability to all Americans by utilizing,

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[62] FNPRM at p.18.
[63] "This country needs a national goal for…the spread of broadband technology. We ought to have…universal, affordable access for broadband technology by the year 2007, and then we ought to make sure as soon as possible thereafter, consumers have got plenty of choices when it comes to [their] broadband carrier." --- President George W. Bush, March 26, 2004. (available on line at http://www.whitehouse.gov/infocus/technology/economic_policy200404/chap4.html)

among other things, "regulatory methods that remove barriers to infrastructure investment." 47 USC §157 nt. The small rural carriers, who used innovation to overcome real, geographic adversity to deliver telephone service, are now overcoming similar hurdles to deliver high-speed broadband services to rural consumers.[64]

The trend toward full rural broadband deployment will only continue with favorable government policies. The Commission must enact stringent rules governing the distribution of any new support mechanism it creates. The differing needs of rural markets must be considered and specific provisions to encourage smart investment in these markets must be adopted.[65]

The infrastructure necessary to extend broadband to remote markets is very costly. Therefore, the Commission should provide explicit funding support for "rural-rural" areas – those areas that are outside of towns and are miles from the nearest end office. Also, consideration should be given to the overall financial health of carriers requesting funding for serving rural areas. A financially weak carrier will not be able to raise the capital to offer advanced services to all of its customers and should not be supported.

The rules adopted as a result of this proceeding must encourage carriers to invest in sustainable rural networks. Investment in network upgrade, expansion and diversification is a critical component in keeping rural America connected. The

[64] Rural carriers are doing a commendable job of deploying broadband. Rural carriers are community-based companies with the ability to make decisions locally. Decisions are made to serve the community's needs, not the stockholders' pockets. NTCA's 2004 Broadband Survey indicates that 92% of Rural ILECs already offer high-speed Internet connections to some of their subscribers with 74% of the subscribers able to connect at high speeds. (NTCA's 2004 Broadband Survey Report is available online at www.ntca.org.)

[65] Rural markets are typically served by small carriers. The Regulatory Flexibility Act permits the Commission to adopt rules specifically tailored for small businesses.

regulatory framework must account for differences between urban and rural, large and small.

IX. THE SWITCHING AND TRANSPORT PORTIONS OF THE WIRELINE NETWORK ARE TRAFFIC SENSITIVE, AND CARRIERS SHOULD THUS BE ALLOWED TO RECOVER THESE COSTS BY CHARGING INTERCONNECTING CARRIERS ON THE BASIS OF USAGE.

The Commission asks what components of the wireline network should be considered traffic sensitive.[66] Under the current regime, those costs deemed traffic sensitive are recoverable through intercarrier compensation charges, while those deemed to be non-traffic sensitive are recovered via end user charges or universal service support.

A. Circuit Switches Are Traffic Sensitive, As Costs Increase With The Number Of Customers On The Network, Changes In Customers' Use Of The Network, And Other Factors

Although the FNPRM suggests that switches are not traffic sensitive,[67] there is an element of traffic sensitivity inherent to circuit switches. These switches are not dedicated to a single user, but must be shared by multiple users. As usage increases, so do costs. In the short term, increases in traffic beyond the capacity of the switch will result in increased holding times, blocked calls and overall customer dissatisfaction. In the longer term, prolonged traffic beyond the capability of the switch will require the carrier to purchase additional switch(es) and to incur the accompanying cost.

Small carriers face an additional impediment that their larger counterparts do not. There is a certain entry level cost associated with the minimal size switch produced—basically, the switch that is "as small as it comes." If the capacity of this smallest available switch is high relative to the company's number of customers, the small

[66] FNPRM, ¶ 67.
[67] *Id.*, ¶ 67-68.

company will be at a decided disadvantage when compared to a larger provider. Per customer costs will be considerably higher for the smaller carrier who is forced to invest in more switching capacity than is needed, yet providers have no choice but to invest in this unneeded switching capacity. Small carriers must incorporate these switching expenditures into their rate design process, with the end result that their customers end up paying more than they otherwise would.

In a technical white paper written for NTCA entitled "Traffic Sensitivity of Telephone Switching Equipment,"[68] Larry Thompson and John De Witte of Vantage Point Solutions concur that switching costs are traffic sensitive, and note that a number of factors can impact traffic patterns of a switching network. These include changes in how subscribers use the network, the addition of carriers, and changes in calling scope.[69] Changes to any of these factors in isolation will require the local exchange carrier to review the adequacy of their switching resources; in combination, the impacts are exacerbated.

Thompson and De Witte also present solid quantitative evidence as to the traffic sensitive nature of switching costs. First, holding call duration constant, they show that the number of DS0 trunks required increases as the number of calls per hour increases.[70] Next, holding the volume of calls constant, they show that the number of DS0 trunks required increases as call duration increases.[71] Finally, for any given number of trunks, they show that "more traffic seconds are available if the percentage of blocked calls is

[68] Larry Thompson and John De Witte, "Traffic Sensitivity of Telephone Switching Equipment," May, 2005 (Thompson and DeWitte). Attached as an Appendix to these comments and made part hereof.
[69] *Id.*at 1-4.
[70] *Id.*at 9.
[71] *Id.*at 10.

increased."[72] Thompson and De Witte conclude that "to keep the integrity and reliability of the system constant the number of trunks must be increased."[73]

A 1996 report by Telcordia Technologies details the harmful impact of increased demand for dial-up Internet access on local exchange carrier networks.[74] According to the authors, increased dial-up traffic for Internet access "requires additional equipment to be provisioned."[75] Later, the authors specifically identify the traffic sensitive portions of the network: "When significant number of subscriber lines suddenly generate 3 times their engineered load, one can expect significant congestion to occur in several parts of the PSTN: the local access switch, the backbone trunk and tandem network, and at the terminating switch which is connected to the ISP."[76]

Finally, a point to ponder: if switches today do indeed have "infinite capacity," as some have argued, why is there no such thing as a "one size fits all" switch? Similarly, if switching is not traffic sensitive, why does the price of a switch rise in proportion to its capacity?

B. Packet Switching Is Traffic Sensitive, As Well.

As noted previously, the industry is rapidly moving from a circuit-switched to a packetized world. In reality, routers are more—not less—traffic sensitive than circuit switches. Routers have finite capacity, and when the volume of packets exceeds that capacity, additional routers are needed. Thompson and De Witte illustrate the traffic sensitive elements of an IP router: the local area network (LAN) module, the wide area

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[72] *Id.*at 11.
[73] *Id.*
[74] Amir Atai, Ph.D., and James Gordon, Ph.D., *Impacts of Internet Traffic on LEC Networks and Switching Systems*, Telcordia Technologies, June 1996.
[75] *Id.*at 1.
[76] *Id.*at 3.

network (WAN) module, the central processing unit (CPU), and the network. Only the physical line interface—the port card—is not traffic sensitive. [77]

There is a far greater range of choice of capacity increments for routers than for circuit switches. Consequently, it is more likely that a carrier who purchases a router based on their current traffic volumes will exceed that router's capacity in the face of increased packet traffic.

Transport Costs

The Further Notice asks what other parts of the wireline network should be considered traffic sensitive.[78] Transport is inherently traffic sensitive. Rural and non-rural carriers face dramatically different realities when it comes to transport costs. Density and distance issues in rural settings are dramatically different than in urban and inter-urban areas. Generally speaking, rural carriers must transport calls over much longer distances than do non-rural carriers. At the same time, many more urban users mean that transport costs may be spread out over a much larger base. As a consequence, per-user costs are much more volatile for rural carriers, and thus charging a flat rate for transport services will result in some customers vastly overpaying for their use of the network while others receive considerably more service than they actually pay for.

Transport costs are traffic sensitive. As traffic increases, more trunks, more terminals and more T1 lines will be required. None of these elements are dedicated to a single user, but must be shared by multiple users. Increasing the capacity of any or all of these components imposes (often significant) additional costs upon carriers.

[77] Thompson and De Witte at 21.
[78] FNPRM, ¶ 67.

Uniform per-minute pricing

The Commission asks whether relevant traffic sensitive costs should be recovered on a per-minute or flat rated capacity basis.[79] In the interests of fairness and efficiency, these traffic sensitive costs should be recovered on a per-minute or other usage sensitive basis. Even if larger carriers recover their costs on a flat price basis, the differences in the scale and scope of operations for smaller companies dictate the need for uniform usage sensitive pricing of traffic sensitive network elements.

Non-cost based rates encourage arbitrage. Under such a regime, users of the network will take any necessary steps to shift their usage to that part of the network where costs exceed the rate charged. In addition, once a customer incurs a flat fee, he will consume as much of that particular service or resource as possible, typically going well beyond his optimal usage levels. Consequently, non-cost based flat rates will also result in inefficiency, as various parts of the network will be either over- or under-utilized. Either outcome is undesirable, as it drains resources that could be more effectively put to use operating, maintaining and updating telecommunications networks.

In reality, flat-rated pricing that is unrelated to the manner in which costs are incurred can have near catastrophic consequences for networks. An excellent real world example of these effects occurred in December 1996 when America Online (AOL) switched the pricing of their service from usage based to a one price, unlimited usage "all you can eat" plan. The net result was that usage dramatically increased virtually overnight, and in the short term many regular users were unable to gain access to their AOL service. In September 1996, total usage of the AOL network was 45 million user

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[79] *Id.* at ¶ 70.

hours; in December, that jumped to 102 million. Similarly, the average AOL customer in September 1996 logged an average of 14 minutes per day online; in December, the average grew to 32 minutes per day—and AOL added 500,000 new customers in December alone.[80] Only after investing hundreds of millions of dollars in new infrastructure was AOL able to meet the increased demand for their service, though not before angry customers filed several class action suits. Under the flat pricing scheme, AOL's customers consumed the service well in excess of their marginal valuation, clearly an inefficient outcome.

Small carriers in particular need to be able to recover their traffic sensitive costs by charging interconnecting carriers on the basis of usage. These carriers have a considerably smaller customer base over which to spread end user charges. Universal service support is an alternative for cost recovery but as shown elsewhere in these comments, that type of recovery has its own inherent problems. Hence, it is critically important that small carriers be able to recover their costs in rates to other carriers.

From a small carrier's perspective, usage sensitive per-minute pricing is the more equitable option. Under flat-rate pricing of usage sensitive services, low volume users subsidize high volume users. Except for those rare circumstances where a carrier's per-minute usage cost exactly matches the flat fee paid, every carrier is either underpaying or overpaying for services received. And while the goal is for total costs incurred and charges assessed to match, that can only be determined *ex-post*. The end result is that inefficiency is virtually assured.

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[80] Laurence Zuckerman, "America Online Moves to Placate Angry Users," *New York Times*, January 17, 1997.

X. A RURAL LEC SHOULD NOT BE RESPONSIBLE FOR THE TRANSPORT OF TRAFFIC BEYOND ITS LOCAL EXCHANGE CARRIER SERVICE BOUNDARIES, ITS OWN PHYSICAL NETWORK OR BEYOND ITS LOCAL CALLING AREA BUT WITHIN ITS NETWORK BOUNDARIES

The Commission solicits comment on how to resolve the disputes related to the location of the point of interconnect and the allocation of transport costs.[81] The Commission notes that there is a lack of clarity among the various rules governing the costs of interconnection facilities and the relationship of those rules to the single point of interconnect (POI) rule.[82] NTCA agrees that clarity is needed**.**

A. Rural LECS Have No Interconnection Obligations That Extend Beyond Their Incumbent Networks

Many parties in this proceeding have argued that the point of interconnect between carriers is at the discretion of the interconnecting carrier.[83] Competitive LECs and CMRS providers argue that they should be permitted to negotiate agreements and connect to a rural ILEC through a third party, typically the RBOC. This approach, however, ignores Section 251 and permits competitive LECs and CMRS providers access to a rural ILEC's network without the rural ILEC having the benefit of a voice in the negotiations. Interconnection negotiations and agreements between an RBOC and a CMRS carrier that exclude the rural ILEC, but directly impact the rural ILEC's network costs not only would violate Section 251, but also the basic principles of contract law (offer, acceptance and consideration). It would be inconsistent with the Commission's pro-competition and deregulatory policies to sanction by rule practices that ignore normal

[81] FNPRM, ¶ 92.
[82] *Id.*
[83] *See,* FNPRM, ¶ *89.*

business expectations in a free market and bind third parties to agreements made in negotiations in which they have no part.

Unless there is an agreement to the contrary, nothing in the laws, rules or industry practice authorizes or gives an RBOC the right to act as the small LEC's agent to enter into agreements. Voluntary three-party arrangements are possible if the rights and responsibilities of all parties are the subject of negotiation and are addressed. However, RBOCs and the interconnecting party cannot unilaterally dictate the terms and conditions of the interconnection with the rural ILEC without the rural ILEC's consent and the Commission should not establish a default rule which is likely to become the *de facto* rule in view of the limited bargaining power of the smaller carriers. A rural ILEC cannot, and should not, be forced to interconnect at a point outside of its own network and involuntarily accept the terms of an agreement and the services of another LEC in order to offer network capabilities that go beyond the rural LEC's service territory.

The Telecommunications Act of 1996 was never intended to force rural ILECs into involuntary indirect interconnection agreements with other carriers. An incumbent's duty to interconnect with other carriers stems from Section 251 of the Act. As the Commission has previously recognized, there is a three-tiered hierarchy of escalating obligations under Section 251.[84] Accordingly, the interconnection obligations of Section 251(c)(2) are more stringent than those under Section 251(a).

Section 251(a) requires that all telecommunications carriers have a duty to interconnect directly or indirectly with the facilities of other telecommunications carriers.

[84] *See, In the Matter of Total Telecommunications Services, Inc. and Atlas Telephone Company, Inc, Complainants v. AT&T Corporation: Memorandum Opinion and Order,* File No. 97-003 at ¶ 25 (rel. March 13, 2001).

There is no requirement that the method or point of interconnection be at the discretion of the requesting carrier. The method of interconnection whether direct or indirect under 251(a) is, at most, an issue to be negotiated between the interconnecting carriers.[85]

It is intended that under Section 251(c)(2), in addition to the general interconnect obligations of Section 251(a), an incumbent LEC that is not otherwise exempt has the additional duty to provide any requesting telecommunications carrier with direct interconnection to its network at any point within the incumbent LEC's network.[86] Section 251(c) does not require direct interconnection of non-exempt ILECs. Section 251(a) applies to exempt rural ILECs but, being a lesser requirement than 251(c) and one that applies to all telecommunications carriers, it cannot be read to require a greater obligation of rural LECs to accept indirect interconnection at any point at the discretion of the interconnecting carrier. Since the obligation to connect indirectly at the point of the requesting carrier's choosing can be found in no other section of the law, rural LECs have no unqualified obligation to connect to other carriers via a third party.

B. The Commission Should Establish A Separate Set Of Interconnection Rules For Rural ILECS Consistent With The RFA Requiring Connecting Carriers To Pay For Transport Costs Beyond The Rural ILEC Network Boundaries

The Commission seeks comment on the ICF's proposed default interconnection rules and other proposed interconnection rules in the record.[87] NTCA does not endorse the ICF's proposed "edge" default interconnection rules, and its proposed "rural carve

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[85] The Commission previously determined that the providing carrier is entitled to choose the method of interconnection, whether directly or indirectly, for delivery of its originating calls to the other carrier's local numbers. *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996: First Report and Order* 11 FCC Rcd 15499, 15991 (1996).

[86] Rural carriers, unless they lose the exemption, are under no obligation to comply with 251(c)(2), and thus under no obligation to interconnect at any point within their network.

[87] FNPRM, ¶ 93.

out" exception to the proposed rules. The level of detail in the proposed ICF's proposed rules is far too complex and difficult for the industry and the Commission to interpret and apply. Adopting all of the ICF rules would result in an administrative nightmare for the Commission and all involved. The Commission can expect that complex default rules will be the *de facto* rules in an industry that is dominated by large carriers that are in the process of further mergers and consolidations.

Assuming *arguendo* that the Commission does establish a default rule requiring that rural ILECs provide indirect interconnection at the requesting carrier's discretion, NTCA agrees with that portion of the ICF proposal which states that rural ILECs should have no obligation to deliver originating traffic beyond the boundaries of a rural ILEC's study area in which a call originates.[88] NTCA also agrees with the section of the EPG plan which states that an ILEC "will not be responsible for delivering traffic or paying any costs to a Point of Interconnection (POI) located at any point outside the ILEC's contiguous serving area or beyond the serving area boundary (i.e., existing meet points)." This would include any transport and third party transiting charges in either direction.[89]

NTCA specifically recommends that the Commission establish and adopt a different set of interconnection rules that would apply to rural ILECs consistent with Regulatory Flexibility Act (RFA).[90] The interconnection rules proposed in this proceeding will have a significant and very different economic impact on the small rural telecommunications carriers as compared to large telecommunications carriers. If rural

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[88] ICF Proposal pp. 19-25, FNPRM, ¶ 40.
[89] The one exception is when a rural ILEC, as defined by the Act, is exchanging local traffic with another rural ILEC. In this scenario, the rural ILEC on whose network the call originates will be responsible for third party transport and/or tandem transiting charges to reach the terminating RLEC's network. *See the EPG Proposal p. 33.*
[90] FNPRM, ¶ 93.

ILECs are required to pay for transporting traffic beyond their service area boundaries in the future, the ability of rural ILECs to maintain their networks and provide rural consumers with affordable telecommunications service and broadband Internet access service will be at risk. Given the potential economic impact of interconnection rule changes on a substantial number of small, rural ILECs, the RFA requires that the Commission consider a separate set of rules for rural ILECs that will minimize the adverse economic impact on them.

As part of a separate set of interconnection rules for rural ILECs, NTCA urges the Commission to not require rural ILECs to pay for any transport costs beyond their network boundaries. Competing carriers that choose to interconnect indirectly with rural ILEC networks through RBOC tandems or other forms of indirect interconnection should bear the costs of transport beyond the rural ILEC's service area. For example, transporting CMRS traffic to a POI outside the rural ILEC network would impose additional burdens on rural ILECs to pay for costs caused by a competing carrier's choice of an indirect interconnection. This CMRS carrier's indirect interconnection POI choice should not shift the burden to pay for the costs associated with this choice onto the rural ILECs. This would be inconsistent with traditional cost-causation principles and inconsistent with the pro-competitive provisions in the Act.

Competitors that chose indirect interconnection points should be required to pay for all transport outside a rural ILEC's network as part of their cost of doing business. Furthermore, given the fact that CMRS carriers charge their customers for all calls that originate and terminate on their customers' cell phones and that any costs incurred by CMRS carriers to satisfy their interconnection obligations are part of the normal operating costs of CMRS carriers, CMRS carriers are already being compensated for transport from their networks to and from rural ILEC service areas by their customers on every call they make. Requiring rural ILECs to provide additional compensation to CMRS carriers for these calls would provide CMRS carriers with an unjustifiable windfall and an even greater incentive not to interconnect directly with rural ILECs.

Forcing competing carriers to pay to transport traffic outside of the rural ILEC's network boundaries would not, as the NPRM suggests, require new entrants to replicate the existing ILEC network.[91] A competing carrier can choose to negotiate a direct interconnection with the rural ILEC and obtain a point of interconnection, or a CMRS carrier can choose to have a single POI per MTA or per LATA and connect indirectly,[92] or a CMRS can contract with a carrier with a physical connection to the rural ILEC, or build their own facilities. It is the CMRS carrier's decision. The costs associated with the transport of traffic would be but one factor in the decision making process.

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[91] FNPRM, ¶ 94.
[92] FNPRM, ¶ 89.

C. The Commission Should Include In Its Separate Set Of Interconnection Rules For Rural ILECS The Requirement That Connecting Carriers Pay For Transport Costs Within The Rural ILEC's Network Boundaries But Beyond Its Local Calling Area

A Rural ILEC should not be required to pay for the cost to transport a competitor's traffic to a distant POI located within its own network but beyond the rural ILEC's local calling area. Rural ILECs are not required by the Act to provide interconnection arrangements or interconnection services to CLECs, CMRS providers, and RBOCs that are greater than the quality of those services the ILEC provisions for itself. The Act only requires ILECs to provide interconnection services and arrangements "at least equal in quality to those provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection."[93]

The network interconnection rules proposed by the ICF and other parties in this proceeding would require rural ILECs to provide competitors with superior and more costly interconnection arrangements than what a rural ILEC provides itself through its existing interconnection and service arrangements. These proposals would require some rural ILECs to provide extraordinary and costly transport to distant locations for local calls and would represent an enhanced interconnection arrangement for competitors at the expense of rural ILECs. Such superior interconnection arrangements have been found by the U.S. Court of Appeals for the 8th Circuit as not required by ILECs under the Act.[94]

The network interconnection rules and obligations in the ICF's edge proposal do not include such conditions and would impose burdens beyond those required by law.

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[93] 47 U.S.C. § 251(c)(2)(C).

[94] *Iowa Utilities Board v. Federal Communications Commission*, 219 F.3d 744 (8th Cir. 2000). The U.S. Court of Appeals for the 8th Circuit found referring to 47 U.S.C. § 251(c)(2)(C), "Nothing in the statute requires the ILECs to provide superior quality of interconnection to its competitors."

In fact, the ICF edge proposal would eliminate all intra-company transport compensation by making it bill and keep.[95] For rural ILECs, intra-company transport compensation can represent a substantial portion of total network costs. A competitor's call that involves transport to distant locations beyond the rural ILEC's local calling area is currently offered and provisioned by IXCs as interexchange toll calls. The Act does not require ILECs to offer a new form of superior exchange service to competing carriers simply because a competitor has unilaterally chosen to interconnect with another carrier at a distant location and has decided not to interconnect directly within a rural ILEC's local calling area where the competitor's calls are completed.[96]

The Act also does not require a rural ILEC to be forced to incur costs to transport traffic to distant locations based on the sole desire of a competitor. A rural ILECs obligation to direct CMRS traffic to distant POIs and to include this traffic in the rural ILEC's local calling service offering, should depend on whether the requesting CMRS carrier or other competing carrier is willing to pay for the additional cost of such transport. The Commission should therefore require as part of any new rules the requirement that requesting carriers are responsible for incurring the cost to distant POIs located within a rural ILEC's network but beyond the rural ILEC's local calling area.[97]

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[95] ICF Brief Appendix A, p. 32.

[96] NTCA's position is consistent with existing extended area service (EAS) agreements. The agreements are largely under the purview of state Commissions and they are accommodations that are designed to allow local calling between exchanges that share a community of interests. Under these agreements, rural ILECs currently do not pay any transiting charges if a rural ILEC customer originated call terminates with a RBOC customer. Also under these same existing EAS agreements, if a rural ILEC customer originated call terminates with a CLEC or CMRS customer, the CLEC or CMRS customer pays the transiting costs for that call originated by a rural ILEC customer. These agreements have been in place for years and have provided benefits to both rural and urban consumers with the expansion of their local calling areas. The agreements are direct interconnection agreements between rural ILECs and large local exchange carriers. NTCA believes that the Commission should not disturb these intrastate arrangements.

[97] NTCA's proposed interconnection rules requiring that connecting carriers pay for: (1) transport costs beyond a rural ILEC's network boundaries; and (2) transport cost within a rural ILEC's network boundaries

D. The ICF Edge Proposal Fails To Consider Non-Contiguous Service Areas Within a Rural ILEC's Study Area and Long Transport Distances Behind the Proposed Edge

According to the ICF proposal, a Covered Rural Telephone Company (CRTC) "must establish an Edge within each Contiguous Portion of the CRTC's Study Area within a LATA (or, in a non-LATA state, local calling area.)"[98] The ICF proposal is unclear as to how the edge proposal would apply to the non-contiguous service areas of a rural ILEC within a LATA or overlapping LATAs. In addition, by requiring one edge per study area, the ICF proposal would create a situation in which rural ILECs would be uncompensated for a significant portion of transport costs. Many rural ILEC have long transport distances with very low traffic volumes occurring behind the ICF proposed edge. These distances can be much longer than the distance from the meet point to the edge.

Under the ICF edge proposal, a rural ILEC would be forced to carry traffic at its own expense from the edge to the central office serving the customer. The ICF plan appears to allow transport cost recovery from the LEC's end users, but the transport costs in very sparsely populated areas will be much too high to recover from the rural ILEC end-user customers only. If rural companies operating in low density, geographically challenging markets are not adequately compensated for the costs imposed on their networks, rural end users will see an unacceptable increase in their rates and rural carriers will be economically incapable of continuing to provide service. If rural rates become too high, the essential telecommunications services encompassed in universal service

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but beyond its local calling area are intended to also address the Virtual NXX rating and routing issue raised in the Sprint Rating and Routing Petition, CC Docket No 01-92.

[98] *Id.* at p. 19.

support will prove unavailable for some rural consumers.[99] Raising rural end-user rates to unacceptable levels would also jeopardize the President's goal of making affordable high-speed Internet access available to all Americans by 2007 and the Act's goal to encourage the deployment of advanced telecommunications capability to all Americans on a reasonable and timely basis.[100]

E. The Commission Should Adopt Rules For Identifying And Billing Phantom Traffic

Today a significant and growing portion of call traffic delivered to rural ILEC networks over common trunk groups is unbillable because the identity of the company originating the traffic is unknown or the rural ILEC does not have an interconnection agreement with the originating carrier. If the Commission does not adopt rules that allow rural ILECs to receive equitable payments from these carriers for the cost they impose on rural ILEC networks, the sustainability of their networks and affordability of rates to rural consumers may be jeopardized. NTCA therefore supports the section of the EPG proposal that recommends that the Commission, after a date certain, require all unlabeled traffic be billed to the carrier at the other end of the trunk group on which the traffic arrives as access. And, in cases where the rural ILEC does not have an existing interconnection agreement with the carrier responsible for the traffic, the Commission should establish equitable default termination rates.[101]

NTCA further recommends that the Commission consider new alternatives for identifying traffic in the future. For example, in January 2005, the Network

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[99] *Qwest v. FCC*, 398 F.3d 1222, 10th Cir., Feb. 23, 2005 (Qwest II). This case can also be found on the FCC's Web page as *Qwest v. FCC*, 10 Circuit Case No. 03-9617, see p. 29.
[100] 47 U.S.C § 706.
[101] EPG Proposal, p. 18.

Interconnection Interoperability Forum (NIIF) released procedures for getting accurate geographic information for call origination into Signal System 7 (SS7) initial address messages (IAM). Wireless and wireline operators and equipment manufactures and other industry forum coordinated to implement existing Jurisdictional Information Parameter (JIP), a six digit field to populate SS7 IAMs. Currently, JIP is an optional parameter to convey geographic information about the location of the calling party. The NIIF recommends seven rules that will provide the actual location of the caller, thus enabling more accurate routing through interLATA and intraLATA lines, as well as more accurate information for billing between carriers.

The seven rules for JIP population proposed by the NIIF[102] include the following:

1. JIP should be populated in the IAMs of all wireline and wireless originating calls where technically feasible.

2. JIP should be populated with an NPA-NXX that is assigned in the LERG to the originating switch or Mobile Switching Center (MSC).

3. The NIIF does not recommend proposing that the JIP parameter be mandatory since calls missing any mandatory parameter will be aborted. However, the NIIF strongly recommends that the JIP be populated on all calls where technically feasible.

4. Where technically feasible if the originating switch or MSC serves multiple states/LATAs, then the switch should support multiple JIPs such that the JIP used for a given call can be populated with an NPA-NXX that is specific to both the switch as well as the state and LATA of the caller. If the JIP cannot be populated at the state and LATA level, the JIP should be populated with an NPA-NXX specific to the originating switch or MSC where it is technically feasible.

[102] *Improving Interconnection Between Wireless and Wireline Carriers*, The evolution of number portability and roaming have obsolete calling directory numbers as the only information on top of which routing, rating and billing decisions are based. The solution may lie in evolving from just relying on phone numbers to also including geographic parameters. BILLING WORLD AND OSS TODAY, Standards Watch, February 2005, pp. 30-31.

5. Where the originating switch cannot signal JIP it is desirable the subsequent switch in the call path populate the JIP using a data fill default associated with the incoming route. The value of the data fill item is an NPA-NXX associated with the originating switch or MSC and reflects its location.

6. When call forwarding occurs, the forwarded call from directory number (DN) field will be populated, the JIP will be changed to a JIP associated with the forwarded from DN and the new called DN will be inserted in the IAM.

7. As per T1.TRQ2, the JIP should be reset when a new billable call leg is created.

According to the NIIF, the JIP standard would be able identify a Bostonian in California making a call on a cell phone with a Boston NPA-NXX and provide the billing information on the area from which the call originated and the telephone number assigned to the originating carrier. This information would improve the rating and routing of the calls, as well as accurate billing information for the company terminating the call. The NIIF recognizes that the Commission has yet to decide whether it will treat VoIP traffic differently or the same as traditional voice traffic. The NIIF, however, also believes that VoIP JIP will be able to populate information on VoIP calls to ensure rating, routing, and blocking are accurate with IP telephony.[103]

NTCA believes accurate information for billing purposes will be a vital piece of any new set of interconnection rules. It will reduce litigation and the administrative burdens on carriers and the Commission. NTCA therefore recommends that the Commission as part of its rules in this proceeding consider adopting the JIP rules and require all unlabeled traffic to be billed to the carrier at the other end of the trunk group on which the traffic arrives as access traffic. In addition, in cases where a rural ILEC

[103] *Id.*, p. 31.

does not have an existing interconnection agreement with the carrier responsible for the traffic, but is able to identify the carrier originating the traffic, the Commission should establish new equitable default termination rates.

F. Rates Charged By Tandem Provider Should Be Tariffed And Cost-Based

In a regulatory environment in which the RBOC tandem is a mandated third party carrier between the rural ILEC and the competitive LECs and CMRS providers, the RBOC becomes the bottleneck for the transiting and transport of traffic. As such, the RBOC holds tremendous market power. Mandating that the RBOC tariff its rates for the traffic transport is necessary to ensure there is no abuse of that market power.

Today's world is one of telecommunications company mergers and acquisitions. We are gradually moving toward just a couple of very large vertically integrated telecommunications companies controlling the majority of facilities and transport avenues. This oligopoly can be harmful to the small, rural providers sitting as independent islands.

Rural ILECs should not be forced into negotiations with the RBOC tandem owner for the transport of traffic. The "negotiations" would be one sided demands, with the RBOCs holding all of the power. Since the rural ILECs would be absolutely dependent on the RBOCs, they would have no option other than to accept the terms offered by the RBOC.

Instead, the RBOC tandem owner should be required to tariff its rates. The rates would be cost-based, not market-based, thus ensuring that no RBOC take advantage of its significant market power. Since parties can intervene in the tariff approval process, all parties retain due process rights. Carriers will be able to negotiate or arbitrate the tariffed rate levels, if parties agree that negotiations or arbitrations are mutually beneficial.

XI. A NEW COST RECOVERY MECHANISM MAY BE NECESSARY FOR RURAL LECS TO MAKE UP REVENUE SHORTFALLS CAUSED BY INTERCARRIER COMPENSATION REFORM

Moving intercarrier compensation recovery to bill and keep, as proposed by the Commission staff and ICF, or requiring mandatory rate reductions in access or reciprocal compensation, will result in a larger portion of a rural company's revenue stream coming from higher end-user customer charges and universal service support. Significant increases to both of these revenue sources are problematic. Higher rural end-user customer charges increase the urban/rural rate disparity and run counter to the universal service goals of affordability and comparability contained in the 1996 Telecom Act. A significantly increased universal service fund could become difficult to fund and politically untenable. Rather than force end-user charges beyond affordability, or the universal service fund beyond sustainability, if the Commission moves forward with a bill and keep form of reform or reduces either interstate, intrastate or reciprocal compensation revenue requirement, it should create a new rural carrier cost mechanism, a residual access cost recovery mechanism (RACRM).

A. A New Rural Cost Recovery Mechanism Would Not Be Universal Service

The new RACRM would compensate rural ILECs for the costs imposed on their networks by other carriers and make up for the revenue lost through mandatory access charge reductions, not otherwise recovered through other sources of funding. The RACRM would be calculated by taking the rural ILEC's current intercarrier compensation revenue requirement (revenues recovered or recoverable from existing interstate and intrastate access and reciprocal compensation) and subtracting out revenues collected from a new unified rate, any SLC increases, and local rate increases. It would be recovered from all providers of telecommunications, IP-enabled services and information services directly connected to a rural ILEC network.[104]

A new RACRM would not be "universal service support."[105] Unlike universal service which is intended to provide consumers with affordable basic local service, the RACRM is intended to compensate rural carriers for the legitimate costs associated with making their network available for use by other carriers.[106] It, therefore, should be targeted to rural ILECs exclusively.

B. A New Rural Cost Recovery Mechanism Should Not Be Portable

A new RACRM should not be made portable to competitive local exchange carriers (CETCs) that do not have the same access costs. Rural ILEC revenue requirements are derived from their actual costs of providing switching, transport and termination services to competing carriers and customers. Wireless CETCs do not offer equal access to IXCs[107] and do not have the same access costs as LECs.[108] There is no legitimate reason for Wireless ETCs to be compensated via an identical support mechanism based on the rural ILEC's RACRM.

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[104] *E.g.*, covered information service providers could be providers of VoIP even if the Commission defines the services as "information services."

[105] Western Wireless proposes to increase SLCs and implement a universal service mechanism with a fully portable high-cost mechanism based on forward-looking costs. *See,* FNPRM ¶55.

[106] *See*, 47 U.S.C. §§ 151and 254, and 47 CFR § 54.101.

[107] Section 332(c)(8) states that CMRS providers shall not be "required to provide equal access to common carriers for the provision of toll service." 47 U.S.C. § 332(c)(8).

[108] It is not possible to determine what the access costs of wireless CETCs are since their arrangements with other carriers are not tariffed but instead are contained in contracts that are not generally available to the public.

Rural ILEC intrastate and interstate access charges are based on each ROR carrier's cost of providing interexchange carriers (IXCs), wireless carriers, and voice over Internet Protocol (VoIP) providers access to rural ILEC networks. A RACM created as a result of this proceeding would be designated to recover a part of the revenue requirement attributable to a ROR carrier's cost, not a CETC's costs. It is the regulated ROR carrier's cost information and its operation in a scrutinized regulatory environment that provides the FCC and the Universal Service Administrative Company (USAC) with the means to verify their cost to provide service. The same is not true for CETCs that do not account for their costs, do not file access charges and provide no verifiable cost information or data to the FCC or USAC.

ILEC costs are recognized in the interstate and intrastate jurisdictions and recovered in rates. In the current regulatory environment, existing accounting rules and the maintenance of access tariffs and reciprocal compensation arrangements ensure that ROR carriers' access charges recover these costs. If a form of bill and keep is adopted and a RACRM implemented, existing accounting, separations, and tariff filing rules will allow the Commission to ensure that this new residual recovery mechanism is sized to recover costs for facilities and services used by ROR rural ILECs in the provision of access transport and termination.

Establishing a non-portable RACRM would be in the public interest. Many CETCs currently requesting rural high-cost universal service support, including wireless CETCs, are not required to follow Commission accounting rules and are not subject to price regulation, service quality standards and carrier of last resort (COLR) obligations. Wireless CETCs are not required to account for their costs and do not collect access charges, and will face no regulatory mandates as a result of this proceeding to reduce their rates to consumers. Mandatory rural ILEC access and reciprocal compensation rate reductions would reduce the per-minute rates that wireless CETCs pay to rural ILECs to connect to their networks, but without mandatory wireless CETC rate reductions passed through to consumers. If the RACRM were considered USF support and made portable to competing carriers, wireless CETCs would receive an unwarranted windfall and the size of the high-cost universal service fund would unjustifiably increase.[109]

Exemption from rate and state entry regulation allows wireless CETCs to avoid the substantial costs associated with cost-studies, tariff filings, rate cases, accounting obligations, separations requirements, audit reviews, and other state and federal regulatory mandates. Wireless CETCs also do not use the same type of facilities to provide the services or incur the same costs for providing the services as rural ILECs. Wireless CETCs do not provide ubiquitous local service.

Furthermore, if the Commission treats RACRM revenues like universal services support, it will not be able to determine that RACRM revenues/support distributed to wireless CETCs are being used "for the provision, maintenance, and upgrading of

[109] The Commission's existing universal service portability rules are currently under review by the Federal-State Joint Board on Universal Service (Joint Board). *In the Matter of the Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, FCC 04-125, FCC order asking the Joint Board to review the Commission's rules relating to high-cost universal service support mechanisms for rural carriers and to determine the appropriate rural mechanism to succeed the five-year plan adopted in the Rural Task Force Order, (rel. June 28, 2004). As part of this review, the Joint Board is considering the elimination of the "identical support rule" which allows every unregulated wireless CETCs the ability to receive the same per-line support of a rural ILEC based on the rural ILEC's costs, and not the wireless CETC's costs. 47 CFR §54.307. Since this rule was adopted in 1997, it has become abundantly clear that providing the ILEC's per line support to all wireless CETCs, regardless of the wireless carriers cost structure or their regulatory status, defeats the Commission's guiding principle of "competitive neutrality." *In the Matter of the Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, FCC 97-157, First Report and Order, ¶¶ 47-50 (rel. May 8, 1997). The Commission defined competitive neutrality to mean that "universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another."

facilities and services for which the support is intended."[110] Support on the basis of another carrier's cost inherently violates Section 254(e) since neither carrier's cost nor their services are identical. Further, as stated above, wireless CETCs do not make their access costs available and are not required to do so under FCC rules. The lack of appropriate wireless CETC cost verification procedures to safeguard against improper distributions of RACRM revenues would also further exacerbate the current USF growth and distribution problems, result in further regulatory arbitrage, and provide unfair competitive advantage to wireless CETCs. The Commission will only be able to guess whether an unregulated wireless CETC is using RACRM support for the services "intended" and whether the support is "sufficient" and not "excessive."[111]

Establishing a portable RACRM would only further exacerbate the wireless CETC gaming problem and unjustifiably increase the size of the high-cost universal service fund. The public interest would be best served by the Commission establishing a non-portable new residual access cost recovery mechanism, such as the RACRM, in this proceeding and eliminating the identical support rule as part of its review of the universal service portability rules.[112]

XII. ADMINISTRATIVE SIMPLICITY AND SUFFICIENT TRANSITION PERIODS ARE KEY COMPONENTS TO SUCCESSFUL INTERCARRIER COMPENSATION REFORM

Most of the industry proposals put before the Commission recognize that rural ILECs are uniquely situated and they propose some sort of accommodation for them. It

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[110] Section 254(e).
[111] *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d at 412 (U.S.C.A. 5th Cir. 1999) ("Excessive funding may itself violate the sufficiency of the Act").
[112] *In the Matter of the Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, FCC 04-125, Rural Task Force Order (rel. June 28, 2004).

is important that all carriers be able to understand the regulation and implement it with minimal disruption to their operations. Unnecessarily complicated rules and regulations will only serve to confuse carriers and provide new opportunity for arbitrage. Whatever the Commission ultimately adopts should have actual rural carrier input, so that the impact on carriers will have been sufficiently thought through.

Rural carriers also stress the need for sufficient transition periods to adjust to a new regulatory regime. The transition periods must not only be sufficient to avoid consumer "rate shock," they must be sufficient to support carrier adjustment to the new regime and to maintain a stable environment for consistent investment in infrastructure. Most rural carriers lack the staff and automated equipment to make quick changes to their processes. Any new rules must provide an adjustment period for rural carriers and their subscribers.

XIII. CERTAIN ISSUES SHOULD BE REFERRED TO THE FEDERAL-STATE JOINT BOARD ON SEPARATIONS

The Commission solicits comment on whether it should refer any of the issues related to intrastate access charges to a Federal-State Joint Board.[113] There is no question of whether the issues "should" be referred to the Joint Board, the law is very clear that they must.

Under Section 410(c) of the Act, the Commission is required to refer "any proceeding regarding the jurisdictional separation of common carrier property and expense between interstate and intrastate operations" to a Federal-State Joint Board.[114] As the Commission correctly recognizes, if this proceeding affects the separation of costs

[113] FNPRM, ¶ 81.
[114] 47 U.S.C. § 410(c).

between the interstate and intrastate jurisdiction, there is no avoiding this "mandatory referral."[115]

Any move to adopt a bill and keep regime at the federal level, either on a mandatory or optional basis, will have significant implications in the intrastate jurisdiction. The data shows the impact on the intrastate level to be more harmful to rural LECs than in the interstate jurisdiction. NTCA estimated the annual state impact to be $1.139 billion and the interstate impact to be $884 million.[116]

It is inconceivable that a bill and keep mechanism can or should be adopted in the federal arena without addressing intrastate jurisdictional implications at the same time. Absent a court decision reversing *Smith v. Illinois Bell Tel. Co.*[117] requiring that some form of jurisdictional separations continue, it may prove very difficult and dangerous to take any action regarding implementation of a bill and keep mechanism until the jurisdictional matter is resolved.

Access charges for intrastate traffic have historically been within the exclusive jurisdiction of state commissions. Proposals that bring the industry to a unified compensation regime necessarily involve the replacement of intrastate access regulation with some alternative mechanism. The proposals at issue, whether they involve a complete shifting of costs from the intrastate to the interstate jurisdiction, or the reformation of intrastate costs according to federal law, implicate the separations process and the allocation of costs. Before adopting any changes, the Commission must show that

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[115] FNPRM, ¶ 81.
[116] NTCA January 6 *ex parte*, at slide 61.
[117] *Smith v. Illinois Bell Telephone Co.*, 282 U.S. 133, 51 S.Ct. 65 (1930) (Smith).

the Joint Board was "aware of the effects on the jurisdictional separations rules . . ." [118] and be afforded the opportunity to make a recommendation. "The plain language of the statute shows that any shift in the allocation of jurisdictional responsibility lies at the heart of 410(c)'s consultation requirements."[119] The Commission cannot avoid the inescapable conclusion that the issues addressed in the NPRM fall within the scope of the mandatory referral requirement of section 410(c).

The arguments that the Commission has the authority to address intrastate access reform or those where there are instances of "mixed use" are irrelevant to the discussion of whether the issues must be referred to the Joint Board. Section 410(c) would have no effect at all if it could be trumped by the "mixed use" doctrine. Proceedings contemplated by 410(c) necessarily involve separations issues related to facilities used for the "mixed" interstate and intrastate jurisdictions. Under 410(c), the Joint Board must be afforded the opportunity to consider all issues involving the allocation of jurisdictional responsibility and prepare a recommended decision.

Not only is it law, but putting the issue before the Joint Board also makes sense as a practical matter. In 1930, the Supreme Court recognized the important role states play to avoid issues of preemption and confiscation.[120] It stated that, "proper regulation of rates can be had only by maintaining the limits of state and federal jurisdiction." Congress obviously intended that state and federal representatives work together, make compromises and negotiate something that would work for both the federal government and the states. Congress sought to preserve a careful balance by forcing the Commission

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[118] *Texas PUC v. FCC,* 183 F. 3d 393 (5th Cir. 1999)
[119] *Id.*
[120] *Smith,* 282 U.S. 133, 51 S. Ct. 65 (1930).

to go to a Joint Board when considering the allocation of costs, and permitting it to do so for "any other matter relating to common carrier communications of joint Federal-State concern." Given the complexities of the issues in this proceeding and the potential far-reaching ramifications, it is difficult to imagine a proceeding more appropriate for a Joint Board recommendation.

XIV. THE REGULATORY FLEXIBILITY ACT REQUIRES THE COMMISSION TO SPECIFICALLY CONSIDER ALTERNATIVES TO MINIMIZE THE BURDEN OF ANY RULE CHANGES ON SMALL CARRIERS

There is no doubt that the Commission must prepare a regulatory flexibility analysis in this proceeding. As the Commission acknowledges, the rules will have a significant economic impact on a significant number of small entities, including NTCA's members.[121] The Commission prepared a Supplemental Initial Regulatory Flexibility Analysis (IRFA) as part of the FNPRM. The Commission requests that comments in response to the Supplemental IRFA be so identified. NTCA requests that this entire filing be considered as part of a response to the Supplemental IRFA.

The Regulatory Flexibility Act also requires that the Commission prepare a final regulatory flexibility analysis in conjunction with any final rules it adopts in this proceeding.[122] The final analysis must contain a description of the projected reporting, recordkeeping and other compliance requirements of the rule, and a description of the steps the Commission has taken to minimize the significant economic impact on small entities, including a statement of the reasons for selecting the alternative adopted in the final rule and why each of the other significant alternatives to the rules which affect the

[121] FNPRM, ¶¶ 152-190.
[122] *See* 5 U.S.C. § 604.

impact on small entities was rejected. Incorporated in these comments are several suggestions on ways to lessen the economic impact of intercarrier compensation reform on small carriers. If the Commission declines to adopt NTCA's suggestions, it is required to explain why.

XV. CONCLUSION

Based on the above stated reasons, NTCA's Blueprint and the requirements of the Regulatory Flexibility Act, NTCA urges the Commission to reject all bill and keep proposals and adopt a separate set of interconnection rules for rural ILECs that contain, among other things, the following elements that will minimize the significant adverse economic impact on rural consumers.

1. Impose no new interconnection obligations on rural ILECs.

2. Recognize and confirm that rural ILECs have no interconnection obligations beyond their network boundaries.

3. Competitors that choose to interconnect indirectly with rural ILEC networks through RBOC tandems or other forms of indirect interconnection are required to bear the costs of transport beyond the rural ILEC's service area. This includes any transport and third party transiting charges in either direction.

4. Competitors that choose to interconnect at distant POIs located within a rural ILEC's network but beyond the rural ILEC's local calling area are required to bear the cost of transport beyond the ILEC's local calling area.

5. Require that all unlabeled traffic that arrives as access traffic on a rural ILEC network be billed to the carrier at the other end of the trunk group on which the traffic was transported to the rural ILEC.

6. Establish new equitable default termination rates in cases where a rural ILEC does not have an existing interconnection agreement with the carrier responsible for the traffic, but is able to identify the carrier originating the traffic.

7. Require that all RBOC tandem transiting rates be cost based and tariffed to prevent abuse of market power.

8. Create a non-portable rural carrier cost mechanism, a residual access cost recovery mechanism (RACRM). The RACRM would be based on embedded cost and calculated by taking the rural ILEC's current intercarrier compensation revenue requirement (revenues recovered or recoverable from existing interstate and intrastate access and reciprocal compensation) and subtracting out revenues collected from a new unified rate, any subscriber line charges (SLC) increases, and local rate increases. The RACRM would be recovered from all providers of telecommunications, IP-enabled services and information services directly connected to the network.

9. Acknowledge that rural ILECs operate under rate-of-return regulation and structure cost recovery for these carriers accordingly.

10. Establish a revenue neutral transition period for rural ILECs and their subscribers to ensure that any new rules preserve universal service and encourage investment in network infrastructure capable of delivering high quality broadband services in all areas of the Nation.

Respectfully submitted,

NATIONAL TELECOMMUNICATIONS
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CERTIFICATE OF SERVICE

I, Gail Malloy, certify that a copy of the foregoing Comments of the National Telecommunications Cooperative Association in CC Docket No. 01-92, FCC 05-33 was served on this 23rd day of May 2005 via electronic mail to the following persons.

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